

In the Matter Of:

RE HONORABLE JULIE A. INTROCASO

HON. MARK S. DERBY

January 18, 2021



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THE STATE OF NEW HAMPSHIRE

JUDICIAL CONDUCT COMMITTEE

* * * * *

* Case Nos.:

IN RE: * JC-19-050-C

HONORABLE JULIE A. INTROCASO * JC-20-010-C

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DEPOSITION OF HON. MARK S. DERBY

Zoom deposition taken by agreement of counsel on

Monday, January 18, 2021, commencing at 9:05 a.m.

Court Reporter: (Via Zoom)

Michele M. Allison, LCR, RPR, CRR

LCR #93 (RSA 310-A:161-181)

1 STIPULATIONS

2 It is agreed that the deposition shall be taken in the
first instance in stenotype and when transcribed may be used
3 for all purposes for which depositions are competent under
New Hampshire practice.

4

5 Notice, filing, caption and all other formalities are
waived. All objections, except as to form, are reserved and
may be taken in court at time of trial.

6

7 It is further agreed that if the deposition is not
signed within thirty (30) days after submission to counsel,
the signature of the deponent is waived.

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1 APPEARANCES:

2 For the Judicial Conduct Committee:

3 WAYSTACK FRIZZELL

4 By: Philip R. Waystack, Esq.

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14 For NHJB:

15 DEPARTMENT OF JUSTICE

16 OFFICE OF THE ATTORNEY GENERAL

17 By: James T. Boffetti, Esq.

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22 Also Present: Dawn Poulson

23

1 I N D E X

2

3 WITNESS: Hon. Mark S. Derby

4

5 EXAMINATION:

6 By Mr. Delaney 7, 143

7 By Mr. Waystack 94

8

9 EXHIBITS FOR IDENTIFICATION:

10 INTROCASO DESCRIPTION PAGE

11 Exhibit 2 Case Summary 12

12 Exhibit 4 3/12/19 Motion to Exceed Fee Cap 42

13 w/margin order

14 Exhibit 8 3/12/19 Notice of Decision to Motion to 41

15 Exceed Fee Cap w/markings

16 Exhibit 14 3/15/19 handwritten recusal order 30

17 Exhibit 17 4/26/19 Order on #41 Motion to Remove GAL 32

18 Exhibit 20 9/12/19 JCC complaint 44

19 Exhibit 22 1/9/20 Introcaso/Dabilis, et al. E-mail 66

20 Exhibit 23 1/9/20 e-mail string 66

21 Exhibit 24 12/19/18 Assented to Motion to Remove 14

22 Ex Parte Hearing From Docket and to Approve

23 Agreed Upon Christmas and New Year's

Parenting Time

24 Exhibit 25 12/9/18 Motion for Instruction 15

1	EXHIBITS FOR IDENTIFICATION CONTINUED:	5	1	HON. MARK S. DERBY	7
2	INTROCASO	PAGE	2	having been duly sworn by the reporter, under	
3	Exhibit 26	16	3	RSA 310-A:181, Limited Notarial Function,	
4	Exhibit 27	20	4	was deposed and testified as follows:	
5	1/11/19 Temporary Hearing/Scheduling		5	EXAMINATION	
6	Conference Order		6	BY MR. DELANEY:	
7	Exhibit 28	24	7	Q. Please state your name.	
8	1/11/19 Parenting Plan		8	A. Mark Derby.	
9	Exhibit 29	28	9	Q. Your Honor, what is your profession?	
10	1/16/19 Notice of Decision		10	A. I am presently a circuit court judge.	
11	Exhibit 30	54	11	Q. Can you describe your judicial background as a	
12	4/5/19 handwritten motion		12	circuit court judge?	
13	Exhibit 31	55	13	A. I became a judge in late 2018 and I've been a judge	
14	Respondent's Motion to Remove		14	for about two, a little over two years now.	
15	Guardian Ad Litem		15	Q. Is it correct that you received your commission as	
16	Exhibit 32	55	16	a judicial officer in September of 2018?	
17	5/10/19 Order On Pending Motions Nos.		17	A. I believe the council confirmed my nomination on	
18	30, 31, 43, 44, 45, 46, 50		18	September 20th and I took my oath in early October, and I	
19	Exhibit 33	57	19	started working like October 29th or 30th.	
20	5/17/19 Notice of Decision		20	Q. Could you generally describe your judicial	
21	Exhibit 34	58	21	assignments after you began working as a judge in late	
22	5/20/19 Further Order on		22	October of 2018?	
23	Continuance No. 50		23	A. The month of November was spent doing training at	
1	EXHIBITS FOR IDENTIFICATION CONTINUED:	6	1	One Granite Place and some shadowing. The month of December	8
2	Derby	PAGE	2	was spent doing shadowing and training in Nashua and about	
3	DESCRIPTION		3	two weeks give or take of district time in Derry.	
4	3/15/19 handwritten recusal order	107	4	The year 2019 I split my time between Nashua and	
5	RSA 641:6 - felony - falsifying		5	Merrimack, roughly 57, 58 percent of it was Nashua, 40, low	
6	physical evidence	132	6	40s was Merrimack. I presently have been splitting my time	
7	RSA 641:7 - misdemeanor - tampering		7	roughly 50/50 2020 and this year between Milford and	
8	with public records	132	8	Merrimack.	
9	3/12/19 Notice of Decision		9	Q. So you gave us some fairly specific percentages on	
10	and Apple Pay Motion w/margin order	134	10	the time split. How did you calculate those percentages?	
11	4/26/19 Notice of Decision and Derby's		11	A. When I first got appointed they send out a sheet	
12	order, Motion to Remove GAL	104	12	that says like so many days in Nashua, so many days in	
13	(Electronically marked exhibits were provided to counsel via		13	Merrimack, and everybody asks me all the time, where are you	
14	Dropbox link.)		14	sitting? Where are you sitting? Where are you sitting? So	
15			15	I basically had those percentages memorized as people said,	
16			16	where are you sitting? Where are you sitting? Like 90	
17			17	something days in Merrimack and like 130 something in Nashua.	
18			18	I had those memorized because I repeated them over	
19			19	and over again to people asking me where I was.	
20			20	Q. When you split time between Nashua and Merrimack in	
21			21	2019, was there any regularity to the days you sat in each	
22			22	respective courthouse or did it vary considerably?	
23			23	A. Every Monday and Wednesday were always Nashua.	

<p style="text-align: right;">9</p> <p>1 Every Thursday was always Merrimack. And then Tuesdays and 2 Fridays could be either.</p> <p>3 Q. When you shadowed in Nashua in December, were you 4 assigned to particular judges?</p> <p>5 A. No. Pretty much one day I'd just sort of see what 6 was going on and I might shadow Judge Leary one day and I 7 might shadow Judge Introcaso the next.</p> <p>8 Q. My understanding -- I'm sorry, your Honor.</p> <p>9 A. There was no -- Nashua in December of 2018 was 10 pretty much just shadowed whoever I wanted, go where I want, 11 and I would -- mostly it was Judge Leary, but I think I sat 12 in on a first appearance with Judge Introcaso.</p> <p>13 Q. In terms of the types of cases you worked on at the 14 beginning of your judicial career, what types of cases were 15 you sitting on?</p> <p>16 A. In 2019, I was scheduled to do family a hundred 17 percent. Every day in Merrimack except one was family. 18 Nashua, it worked out to family just about every day except 19 maybe once a month I'd do district. And there was a little 20 bit of probate here and there. Mostly guardianships of 21 incapacitated.</p> <p>22 Q. Do I understand correctly that your arrival in the 23 9th Circuit handling marital cases resulted in a transition</p>	<p style="text-align: right;">11</p> <p>1 Q. Your Honor, you're generally aware that this matter 2 involves a JCC proceeding related to Judge Introcaso and a 3 marital case in the 9th Circuit entitled Campbell versus 4 Partello?</p> <p>5 A. Yes.</p> <p>6 Q. I'll refer to that as the Partello case in this 7 instance given that she was the party who filed the JCC 8 complaint at issue.</p> <p>9 Are you familiar with two orders issued by Judge 10 Introcaso in March -- on March 12th of 2019 that we have 11 generally referred to in this matter as the Apple Pay order 12 and the motion to exceed fee cap?</p> <p>13 A. Yes.</p> <p>14 Q. So if I use those terms in this deposition, you 15 understand what those relate to?</p> <p>16 A. Yes.</p> <p>17 Q. I understand you had an opportunity to consider 18 those orders de novo on April 26th of 2019; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Your Honor, what's the current status of the 21 Partello case to your knowledge?</p> <p>22 A. I don't know. I'll say it this way, I know it's 23 still pending, but I have not had any involvement with it</p>
<p style="text-align: right;">10</p> <p>1 of Marital Master DalPra to take more assignments in 2 different courthouses?</p> <p>3 A. I don't -- I don't know. I know Master DalPra did 4 some writing in Nashua in 2019. I think he was sitting -- he 5 sat some days in 2019, but I don't really know what he did 6 before or what he's done since 2019.</p> <p>7 Q. How does your current caseload between areas of 8 judicial review compare to how it was in 2019?</p> <p>9 A. I would say I'm doing more district. It's sort of 10 a -- maybe 70/30 split of family and district between Milford 11 and Merrimack. I don't do any -- I've done no probate.</p> <p>12 Q. Can you briefly describe your private practice and 13 legal education prior to becoming a judge?</p> <p>14 A. Sure. I graduated from Boston University School of 15 Law in 2018 (sic). I was a law clerk for the Massachusetts 16 Superior Court for one year. Then I practiced at general 17 civil practice at Walker & Varney in Wolfeboro from '99 18 through 2004, then I was at Cleveland, Waters & Bass in 19 Concord from 2004 until becoming a judge in 2018.</p> <p>20 Q. And, your Honor, I believe you may have 21 inadvertently misstated the date of your graduation from BU 22 Law School, so I'll ask you to repeat that for the record.</p> <p>23 A. 1998.</p>	<p style="text-align: right;">12</p> <p>1 since 2019.</p> <p>2 Q. And I just lack access to the later pleadings, 3 which prompts the question, your Honor, did you proceed over 4 a trial or a hearing of the merits?</p> <p>5 A. No hearing on the merits. Several status 6 conferences and motion hearings, but I did not preside over a 7 final or temporary hearing in that case.</p> <p>8 Q. Do you know if a final hearing has occurred?</p> <p>9 A. I don't know. I don't think it has. And the only 10 reason I know is I -- in preparing, I looked at the docket 11 report and it was still pending.</p> <p>12 Q. Okay.</p> <p>13 A. But I had no involvement with the case after 2019.</p> <p>14 Q. And based on the review of the case summary, is it 15 fair to say that you handled this case regularly after Judge 16 Introcaso recused herself in March 2019 during the calendar 17 year 2019?</p> <p>18 A. Yes.</p> <p>19 Q. And just to orient you to that, your Honor, I will 20 ask Attorney Boffetti to show you what was previously marked 21 as Exhibit Introcaso 2.</p> <p>22 (Introcaso Exhibit 2 was marked.)</p> <p>23 A. (Witness peruses document.) Okay.</p>

<p>1 Q. You'll see it's a case summary for the Partello 2 case printed on October 29 of 2019? 3 A. Correct. 4 Q. Drawing your attention to page 3 of 10, index 24, 5 it appears you considered a motion for instruction in 6 December of 2018? 7 A. Yes. 8 Q. And then looking at indexes 27 and 28, it indicates 9 that you had reviewed a recommendation of Marital Master 10 DalPra related to the parenting plan? 11 A. I see a scheduling -- yes. Yeah, January 11th, 12 yeah. 13 Q. And then on indexes 30 and 31 on page 4 of 10, it 14 appears you considered two motions for contempt in May 2019 15 that had been filed in January of 2019? 16 A. Correct. 17 Q. And then just to orient you to the Apple Pay order 18 and the fee cap order, you see those listed at indexes 34 and 19 35? 20 A. Yes. 21 Q. And then consistent with your prior statement, it 22 looks like as of index 39 on page 5 of 10, you're primarily 23 handling this case in 2019 after that date?</p>	<p>13 15 1 2018? 2 A. Correct. 3 Q. Your Honor, if you could review Introcaso 25. 4 (Introcaso Exhibit 25 was marked.) 5 A. I see it. 6 Q. That was a motion for instruction filed by the 7 guardian ad litem; is that correct? 8 A. Correct. 9 Q. You also issued a margin order in that case on the 10 second page of the motion dated December 31, 2018? 11 A. Correct. 12 Q. That's your handwriting; is that correct? 13 A. Correct. Yes. 14 Q. And is it your practice to use your name stamp and 15 a time stamp when you make margin orders? 16 A. It is my practice to use a date stamp and a stamp 17 with my name on it. Although I'll tell you, December 31, 18 2018, I was pretty new and I, you know, didn't really have 19 any specific practice, but I found that using a date stamp 20 was faster and clearer than writing the date by hand, so yes. 21 Q. Appreciating that your practices were developing as 22 you began to sit as a judge, can you give me a general sense 23 of when you use a marginal order and when you write an order</p>
<p>14 16 1 A. Correct. 2 Q. If you could review Introcaso 24, your Honor. 3 (Introcaso Exhibit 24 was marked.) 4 A. Introcaso -- 5 MR. DELANEY: That would be the first new exhibit 6 in the sealed envelope. 7 MR. BOFFETTI: Okay. All right. There you go. 8 Q. While Attorney Boffetti opens that, I'm going to 9 simply review with you the orders in the case. 10 A. Okay. I've got 24. (Witness peruses document.) 11 Q. Your Honor, Introcaso 24 is an assented-to motion 12 regarding parenting time with an order you issued approving 13 the motion on the second page. Do you see that? 14 A. I do. 15 Q. Recognizing that sometimes judges issue orders 16 separately from a motion and sometimes they use handwriting 17 to approve a motion on the motion itself, is there a term 18 that you use to describe your court orders when you apply 19 handwriting to a motion as opposed to issuing a separate 20 court order? Do you call that something? 21 A. I'm pretty sure we call those margin orders. 22 Q. Okay. So we'll call -- so you'd indicate that on 23 Introcaso 24, you issued a margin order on December 21st of</p>	<p>14 16 1 on a separate page? 2 A. Well, if it's -- if it can be done in a few 3 sentences, I will do a margin order. If it needs more space, 4 I will handwrite it -- I will use a longer order. It just 5 depends. I mean, sometimes I'll start writing -- like 6 Introcaso 25 is a pretty long one, but I would just sort of 7 experiment -- not experimenting, but, you know, that was a 8 long one. 9 But if it's faster to write maybe four sentences 10 than it is to, you know, start up the computer or take a 11 separate sheet of paper and write so... I don't know if I 12 answered your question. 13 Q. You did, thank you. Can you review Introcaso 26. 14 (Introcaso Exhibit 26 was marked.) 15 A. (Witness peruses document.) Yep. 16 Q. Is this a file copy of the Notice of Decision issue 17 with respect to your two orders that we just reviewed on 18 Introcaso 24 and Introcaso 25? 19 A. Yes. It's a Notice of Decision on the two 20 handwritten orders, yeah. 21 Q. And on this Notice of Decision, your marginal order 22 has been included on the Notice of Decision by the clerk who 23 processed this Notice of Decision?</p>

	17		19
1 A. It appears so, yes.		1 Decision going out. There can be. I don't know an average	
2 Q. There are three initials at the bottom of the		2 length or anything, but there can be a gap.	
3 Notice of Decision, which indicate the clerk who processed		3 Q. Based on your experiences, why do you believe there	
4 the Notice of Decision. In parentheses it says 906. Do you		4 can be a long gap?	
5 see that?		5 A. I don't know. The clerks are very busy down there	
6 A. Yes.		6 and Nashua is a very busy courthouse. They have to go to the	
7 Q. Do you know any of the -- the numbering sequence		7 windows and stuff. I'd only be speculating, but I know that	
8 for clerks to identify --		8 there have been times when I've issued a margin order and	
9 A. No.		9 then I've had a hearing two weeks later and the parties might	
10 Q. -- who processed the orders?		10 still not have the order because it was still being processed	
11 A. I have no idea.		11 or I guess they -- so it can take a while. I don't know why.	
12 Q. This Notice of Decision was issued on January 7 of		12 I never really inquired.	
13 2019?		13 MR. WAYSTACK: Move to strike that as to his -- the	
14 A. Yes.		14 judge's words about speculation.	
15 Q. And is it your understanding that at the same time		15 Q. And is there any way you as a judge can find out	
16 this Notice of Decision was issued and a file copy was made		16 when the file copy of the Notice of Decision is actually	
17 for the case file, that's the period of time when the actual		17 placed into the case file?	
18 marginal orders would be sent to the parties with this Notice		18 A. I don't know how to do that. I mean, if it's in	
19 of Decision?		19 there, it's in there. If it isn't, it isn't.	
20 A. I don't know what gets sent to the parties. I		20 Q. Do you as a judge receive any notice from the	
21 didn't know at that time and I'm not sure what the process		21 clerk's office when the Notice of Decision related to your	
22 is.		22 orders is processed?	
23 Q. So specifically you don't know if they just send		23 A. No.	
	18		20
1 this Notice of Decision or if they send it with a copy of the		1 Q. So the only way you would know if a Notice of	
2 original motion containing your marginal order?		2 Decision is processed is if it is, one, located in the case	
3 A. In preparing for this case and looking back at it,		3 file, and two, you look at it in the case file; is that	
4 it's my understanding that in Nashua they do attach a		4 correct?	
5 photocopy of the written margin order to the Notice of		5 A. I suppose if I wanted to see if it had been issued,	
6 Decision. I'm not sure that all clerks do that in all		6 I could look on Odyssey and see, but ordinarily I wouldn't do	
7 courthouses.		7 that unless I was interested in something specific and looked	
8 Q. And so relative to the assented-to motion for the		8 it up.	
9 holiday parenting plan, your order dated December 21st was		9 Q. So you would have to affirmatively either look at	
10 processed 17 days after you issued the order?		10 it in the case file or use your case management system to	
11 A. That appears to be the case, yes.		11 track the processing of the order?	
12 Q. And the Notice of Decision related to your motion		12 A. Yes. I can't think of any other way.	
13 for instruction marginal order that you issued on		13 Q. Your Honor, can you review Introcaso 27, which is a	
14 December 31st was processed a week later?		14 scheduling conference order?	
15 A. Yes.		15 (Introcaso Exhibit 27 was marked.)	
16 Q. So I take it there are occasions when the clerk's		16 A. (Witness peruses document.) Yes.	
17 office requires a bit of time to process and issue marginal		17 Q. You cosigned this recommendation for Marital Master	
18 orders that you issue as a judge?		18 DalPra on January 11th, 2019?	
19 MR. WAYSTACK: I'll object to the form. You can		19 A. Yes.	
20 answer.		20 Q. How do you receive marital master recommendations	
21 A. It's been my experience that if I do signing at the		21 to cosign?	
22 signing table and put signing in the pile, there can be a		22 A. Are you asking how I do it now or how I did it in	
23 long gap between me signing an order and the Notice of		23 Nashua or in 2018?	

<p>1 Q. Let's focus on Nashua in late 2018 and early 2019.</p> <p>2 A. Well, in terms of signing, in December of 2018 I --</p> <p>3 we did not have a signing cubicle, so signing would come into</p> <p>4 my office on a cart and I would do some signing, and I didn't</p> <p>5 have an office. I was working out of a conference room in</p> <p>6 December of 2018.</p> <p>7 So signing would come into my conference room, I</p> <p>8 would put it on the table, I would do the signing, and then I</p> <p>9 would put it back on the cart or put a note on it that says</p> <p>10 the signing is done.</p> <p>11 2019, we put up -- we used a cubicle that had -- a</p> <p>12 cubicle next to the district signing cubicle where there were</p> <p>13 piles, and I think there was a pile for Master DalPra</p> <p>14 cosigning, a pile for Lauren Thorn cosigning, and then a pile</p> <p>15 with my name and a pile with Judge Introcaso's name.</p> <p>16 So I tend to think that in January of 2019, I don't</p> <p>17 know when we got the signing cubicle opened, but if it would</p> <p>18 have come to me as signing, I would have looked at it and</p> <p>19 signed it and sent it along.</p> <p>20 Q. Is there any way you could identify when you began</p> <p>21 using the cubby you described in 2019, appreciating your</p> <p>22 testimony you don't have a specific recollection of when that</p> <p>23 occurred?</p>	<p>21</p> <p>1 A. Yes. If a -- unless it were like a complicated</p> <p>2 discovery motion or something, I might bring that back to my</p> <p>3 office and work on it, but for the most part the signing</p> <p>4 would happen sitting at the cubicle on the third floor.</p> <p>5 Q. Was it your experience that it was common for</p> <p>6 judicial officers to sit at that cubby and consider master</p> <p>7 recommendations?</p> <p>8 A. Yes. In 2019, yes.</p> <p>9 Q. And looking at page 2 of 2 on the temporary hearing</p> <p>10 scheduling conference order, can you just describe for me in</p> <p>11 the preprinted cosignature line what it is you do as a judge</p> <p>12 when you cosign a master recommendation?</p> <p>13 A. I look at the master recommendation and see if I</p> <p>14 agree with it, and then I sign it if I do, and if I don't, I</p> <p>15 have questions, I talk to the master.</p> <p>16 Q. And the certification says: I hereby certify that</p> <p>17 I have read the recommendations and agree that, to the extent</p> <p>18 the marital master/judicial referee/hearing officer has made</p> <p>19 factual findings, she/he has applied the correct legal</p> <p>20 standard to the facts determined by the marital</p> <p>21 master/judicial referee/hearing officer. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What does that language mean to you?</p>	<p>22</p> <p>1 A. I think it was pretty early, but I can't tell you</p> <p>2 when it happened. I know we discussed how to do the signing</p> <p>3 and where to put it, and ultimately we had a district signing</p> <p>4 cubicle for the district division stuff, and next door to it</p> <p>5 we had a cubicle that wasn't being used and we made that into</p> <p>6 the family signing cubicle. And there was, you know, those</p> <p>7 labels and then a place where everything was done. Once you</p> <p>8 signed it, it would be put in that pile.</p> <p>9 Q. When you stated pretty early, were you referring to</p> <p>10 pretty early in calendar year 2019 when you established the</p> <p>11 cubby?</p> <p>12 A. I didn't establish it, I think the clerks did, but</p> <p>13 it was pretty early, because I was doing the signing, and I</p> <p>14 think it made sense to have a centralized place for signing</p> <p>15 rather than have it on a cart.</p> <p>16 Q. Once you got out of your conference room and</p> <p>17 received a chambers or office, how did you handle the</p> <p>18 cosigning of master recommendations?</p> <p>19 A. They would be in the signing cubicle and I would go</p> <p>20 to the signing -- if signing needed to be done, I would go to</p> <p>21 the signing cubicle and do signing.</p> <p>22 Q. You would sit at the cubicle and sign there as</p> <p>23 opposed to bringing the case files back to your office?</p>	<p>24</p> <p>1 A. It means that I've read it and I -- it means what</p> <p>2 it says. It's boilerplate that appears on pretty much all of</p> <p>3 our forms. I don't know why it's there, but I think it's</p> <p>4 there just because legally we are taking ownership of the</p> <p>5 order, and if -- I guess it's because they're not a judge. A</p> <p>6 judge has to approve the factual findings and the legal --</p> <p>7 the legal conclusion -- the legal ruling the master is</p> <p>8 making.</p> <p>9 Q. And does that certification identify the scope of</p> <p>10 judicial review of a judicial officer considering a master</p> <p>11 recommendation?</p> <p>12 MR. WAYSTACK: Objection to form.</p> <p>13 A. Can you rephrase that? I'm not really sure what</p> <p>14 you mean.</p> <p>15 Q. Sure. The certification we just read, does that</p> <p>16 identify the scope of the judicial review that you as a</p> <p>17 judicial officer are supposed to do when you consider a</p> <p>18 marital recommendation?</p> <p>19 A. Yes.</p> <p>20 Q. Your Honor, could you review Introcaso 28?</p> <p>21 (Introcaso Exhibit 28 was marked.)</p> <p>22 A. (Witness peruses document.) Yes.</p> <p>23 Q. This is a parenting plan, and in the first</p>
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	25		
1 paragraph it identifies the plan with a checkmark proposed by 2 petitioner with some handwriting and amended by the court. 3 Do you see that?		1 marital master initials there next to the handwriting; is 2 that right?	27
4 A. Yes.		3 A. I don't see any.	
5 Q. Do you recognize the handwriting?		4 Q. And there's no time that the White-Out correction	
6 A. I flipped ahead and saw that Bruce DalPra cosigned 7 it, so that must be -- it's not mine, so it must be his.		5 tape was applied in the margins, is there?	
8 Q. Turning your attention to page 6 of 9 of the 9 parenting plan.		6 MR. WAYSTACK: Objection to the form.	
10 A. Yes.		7 A. No. I'm sorry, I don't see anything other than the	
11 Q. Under paragraph D1, do you see some handwriting 12 under the heading, Transportation and Exchange of Children?		8 handwriting and the black dashes that suggest that there was 9 use of White-Out tape.	
13 A. Yes.		10 Q. And in your experience as a judge, is it fairly	
14 Q. Do you recognize that as Master DalPra's 15 handwriting?		11 common for you to see that White-Out applied to a parenting	
16 A. All I know is it's not mine.		12 plan, you know, without seeing marginal initials or time	
17 Q. And --		13 stamps associated with the use of correction White-Out tape?	
18 A. I look at the word "amended" and amended appears to 19 be in cursive and then I look at D1 and it appears to be 20 written in more of a printing style. I don't -- none of 21 that's mine but -- so I can't -- I don't know whose 22 handwriting that is.		14 MR. WAYSTACK: Objection to the form. You may 15 answer.	
23 Q. Fair enough.		16 A. If I get -- if I get a -- if a master holds a 17 temporary hearing and I get a stack of temporary documents 18 signed by the master or a judicial referee, it's not uncommon 19 for those to be based on a proposal but for the master or the 20 referee to change them with White-Out and make handwritten 21 changes, and my assumption is that if the master or the 22 referee delivered those documents to the clerk and then the 23 signing pile, that those handwritten changes are what the	
	26		
1 A. I'm assuming -- I very much assume it's Master 2 DalPra, but I haven't looked at his work in over a year, so I 3 can't -- I can't tell you who -- for sure who that is.		1 master wanted or the referee.	28
4 Q. Understood. Thank you. You'll see some sort of 5 little black ink marks in the box under D1. Do you see 6 those, beyond the handwriting?		2 Q. Your cosignature on the parenting plan is on page 9 3 of 9; is that correct?	
7 A. Yes.		4 A. Yes.	
8 Q. And, your Honor, it's hard for you to see this on a 9 photocopy, and we don't have access to the originals as 10 parties to this case. So let me just represent to you that 11 there's some White-Out correction tape that has been applied 12 to that paragraph with the handwriting that you see written 13 on top of the White-Out correction tape.		5 Q. Your Honor, please review Introcaso 29. (Introcaso Exhibit 29 was marked.)	
14 Is it unusual for the court to be using White-Out 15 tape on parenting plans?		6 A. (Witness peruses document.) It's a Notice of 7 Decision.	
16 MR. WAYSTACK: Objection to the form. You may 17 answer.		9 Q. That's the Notice of Decision related to the 10 temporary parenting plan and scheduling conference orders we 11 just reviewed?	
18 A. No. In my experience marital masters will take a 19 temporary plan proposed by a party and then if they disagree 20 with something, they will use White-Out and write their own 21 stuff on it and then give it to me for signing. And that's 22 just based on my experience.		12 A. That's what it appears to be, yes.	
23 Q. And looking at paragraph D1, there aren't any		13 Q. And you'll see the three initials for the clerk who 14 processed it in the bottom left. You don't recognize those 15 initials either, do you?	
		16 A. I never learned what those meant or who they 17 applied to.	
		18 MR. WAYSTACK: Mike, just for the purpose of 19 keeping records today, you used the words "initials," you 20 mean the three digits, right?	
		21 MR. DELANEY: Thank you, Phil. Yes, that's a 22 helpful clarification.	
		23 Q. And it looks like there was a five-day time lag	

<p>1 between your order and the issuance of the Notice of 2 Decision.</p> <p>3 A. Yes.</p> <p>4 Q. Your Honor, at some point did you learn that Judge 5 Introcaso had recused herself from the Partello case?</p> <p>6 A. Yes.</p> <p>7 Q. How did you learn that?</p> <p>8 A. I don't remember exactly how I learned it. The one 9 way I -- I know I learned it, I know that it was -- she 10 issued an order of recusal, and that -- I definitely learned 11 it from there, but I don't know whether a clerk told me or 12 she told me or anything else. I don't remember exactly how I 13 learned.</p> <p>14 Q. You mentioned the order of recusal and that you 15 learned it from there. I take it that means you had an 16 opportunity to read that recusal order at some point in time?</p> <p>17 A. I did.</p> <p>18 Q. And you don't have a recollection one way or the 19 other at present regarding when -- whether any other clerks 20 spoke to you about the recusal?</p> <p>21 A. I just don't remember if -- I don't remember 22 whether it showed up in my signing pile and that's where I 23 read about it or if someone said, Judge Introcaso is recused,</p>	<p>31</p> <p>1 paragraph reads: The marital master has been reassigned to 2 another court location, so numerous substantive motions were 3 presented to this judge for review.</p> <p>4 Did you have any sense as to what particular 5 substantive motions Judge Introcaso was referring to in her 6 order when you considered the case file?</p> <p>7 A. No, I just knew she'd ruled on motions. I didn't 8 know whether she meant they were all substantive or just 9 some. I didn't know which specific motion she was referring 10 to.</p> <p>11 Q. And did you have any understanding of what a 12 substantive motion would mean?</p> <p>13 A. I really don't think I spent any -- I don't think I 14 focused on the word "substantive." I don't know what she 15 meant by that.</p> <p>16 Q. Referring, your Honor, to the last page of Judge 17 Introcaso's March 15th order, the paragraph numbered two 18 under the order reads: The clerk shall expeditiously work 19 with the parties to reassign this matter, resolve the pending 20 motions, and schedule this matter for any further hearing. 21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know how you went about the process of</p>
<p>30</p> <p>1 this is your case now. I just don't remember.</p> <p>2 Q. And I'm going to show you that recusal order in a 3 moment, your Honor. It's dated March 15, 2019. Do you have 4 any recollection of whether you spoke to Judge Introcaso 5 about the Partello case on or about March 2019?</p> <p>6 A. No.</p> <p>7 Q. You don't have a recollection one way or the other 8 or you did not speak to her?</p> <p>9 A. I don't have a recollection one way or the other, 10 no.</p> <p>11 Q. Can you please review Introcaso 14? (Introcaso Exhibit 14 was marked.)</p> <p>13 A. (Witness peruses document.) Okay.</p> <p>14 Q. Your Honor, is this the order of recusal by Judge 15 Introcaso to which you referred?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have the opportunity to review this recusal 18 order in connection with the orders that you issued in this 19 case in April of 2019?</p> <p>20 A. Yes, I know I read it before I issued the April 21 orders.</p> <p>22 Q. Directing your attention to the last full paragraph 23 on page 1, which is JAI 158 Bates number, the last full</p>	<p>32</p> <p>1 understanding what motions were pending when this case was 2 referred to you?</p> <p>3 A. Yeah, I mean, I know that there were motions 4 pending, so it would be all motions that didn't have a ruling 5 on them at that time. Those would be pending motions.</p> <p>6 Q. Your Honor, please review Introcaso 17. (Introcaso Exhibit 17 was marked.)</p> <p>8 A. (Witness peruses document.) Yes.</p> <p>9 MR. DELANEY: Jim, for the purposes of going 10 forward, I have no objection if it's easier for his Honor to 11 sort of have a pile of the exhibits next to him.</p> <p>12 A. Oh, no, is that a problem if the pile --</p> <p>13 Q. No, for the purposes of the record, your Honor, if 14 that will move things along, I'm happy to have it closer by 15 if that's convenient.</p> <p>16 A. It might save a few seconds.</p> <p>17 Q. Can you identify Introcaso 17?</p> <p>18 A. This is what I've referred to as the recusal -- no, 19 I'm sorry, it's the de novo order.</p> <p>20 Q. And, your Honor, this order is somewhat long. Can 21 you help me get a sense of why you think this one was 22 handwritten as opposed to typed?</p> <p>23 A. I don't know. It's just long enough that it</p>

<p>1 probably could have been typed, but not so long that it would 2 have been worthwhile to turn on the computer and create a 3 form and type it.</p> <p>4 Q. Do you have a present memory of where you were 5 located when you wrote this order?</p> <p>6 A. I was probably in my chambers.</p> <p>7 Q. Why do you --</p> <p>8 A. I know it would have -- I think it started in the 9 signing cubicle and then when I saw how much there was to do, 10 I probably took it with me to my chambers and worked on it 11 there.</p> <p>12 Q. So this is one of those cases you decided where 13 there was sufficient complexity that you may have started at 14 the cubicle but brought the case file back to your office?</p> <p>15 A. I can't be a hundred percent sure, but it sure 16 seems like it, yes, because it involved looking at lots of 17 different orders and then writing something.</p> <p>18 Q. When you draft an order of this nature, would it be 19 typical for you to have the whole case file with you?</p> <p>20 A. Yes. Well, no, the whole case -- well, yes. I 21 don't know whether there were two volumes at that point or 22 not, but I would have needed to at least go back to October 23 24 of 2018, and that's pretty close, I think, when the case</p>	<p>33</p> <p>1 review of all the orders that Judge Introcaso made. 2 And so in my view the remedy for the -- the remedy 3 for the recusal was an independent review by a neutral judge, 4 and so that's what I did. In other words, she moved to -- 5 she moved to get rid of the guardian ad litem, and I looked 6 at it saying, well, if this had come through my signing pile, 7 me being independent, would I have approved Master DalPra's 8 recommendation, and I would have and that's what I said. 9 Q. That's helpful. And you listed the two March 12, 10 2019, orders regarding the motion to exceed fee cap and the 11 Apple Pay order in the first paragraph of your order?</p> <p>12 A. I did. Yeah, I -- they were the most recent, so I 13 started with the oldest one, October 24. There were some in 14 February and then there were some in March. And what I did 15 is I made an independent review of Master DalPra's 16 recommendation, and I concluded that I would have approved -- 17 in other words, if those things had showed up in my signing 18 pile, I would have approved all of those.</p> <p>19 Again, what I did is I looked at the -- and in that 20 case I looked at the motion, I looked at the objection, and I 21 came to the same conclusion on everything except the Apple 22 Pay order.</p> <p>23 Q. And why do you say on everything except the Apple</p>	<p>35</p>
<p>1 started, so I -- I would have -- I would have at least had 2 something going back that far.</p> <p>3 Q. And the order is entitled: Order on No. 48 Motion 4 to Remove GAL.</p> <p>5 A. Correct.</p> <p>6 Q. In the first paragraph, you identify motions you 7 reviewed prior to ruling on the motion to remove the GAL?</p> <p>8 A. That's what I said. I think -- yeah, I reviewed 9 the October 24th order, and then I reviewed -- I basically -- 10 I think what I did is I went off Judge Introcaso's recusal 11 order listing all the stuff that she said she ruled on, and 12 then I think I also checked the docket report or something to 13 make sure that I caught all of the Introcaso orders and then 14 I listed them all.</p> <p>15 Q. What was your purpose in doing so?</p> <p>16 A. Well, what happened is Ms. Partello -- after Judge 17 Introcaso recused herself, Ms. Partello filed a motion to 18 discharge the guardian ad litem, and I had to rule on that 19 motion, and I think that's the motion that ended up in my 20 signing pile that I had to deal with.</p> <p>21 And because Judge Introcaso recused herself because 22 of the guardian ad litem, and now a party wanted to get rid 23 of the guardian ad litem, I had to make sort of a de novo</p>	<p>34</p> <p>1 Pay order? Because of the clarification you made?</p> <p>2 A. Yeah. I wanted to allow the respondent to pay with 3 a personal check.</p> <p>4 Q. So let me just back you up one minute. You did 5 review the Apple Pay order and the fee cap order issued by 6 Judge Introcaso on March 12th?</p> <p>7 A. On April 26th I reviewed the motion and the 8 objection and the -- and her ultimate order, yes.</p> <p>9 Q. And you understand that those orders did not 10 include a marital master recommendation?</p> <p>11 MR. WAYSTACK: Objection to the form.</p> <p>12 A. I do -- I do now. I don't remember -- I don't 13 remember if the distinction mattered to me as much when I did 14 this in April. But either way I was just, you know, doing a 15 de novo review of everything that Judge Introcaso did.</p> <p>16 Q. Your Honor, when you reviewed the motion to exceed 17 fee cap and the motion related to the Apple Pay order, do you 18 know if White-Out correction tape had been applied over Judge 19 Introcaso's March 12 handwritten marginal orders when you 20 made your ruling on April 26th?</p> <p>21 A. I just can't remember. I remember seeing the 22 capital "only," and do I remember whether I pulled that off a 23 Notice of Decision or whether I looked at it on the sheet, I</p>	<p>36</p>

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1 can't be a hundred percent sure. It was a long time ago.	
2 Q. Your Honor, with apologies, I think the	
3 difficulties of the mask just restricted my hearing on that.	
4 You indicated that you remembered reviewing something on one	
5 of the orders. Can you repeat that?	
6 A. I remembered, because I was doing a de novo review,	
7 I read the motion, I read the objection, and I'm quite sure	
8 that I saw the word "only," O-N-L-Y, capitalized.	
9 Q. That's what I --	
10 A. I'm not a hundred percent sure whether I saw them	
11 in Judge Introcaso's handwriting on the margin at the end of	
12 the motion, or did I see it on a Notice of Decision. I	
13 cannot be morally certain one way or the other at this point.	
14 Q. That's helpful. Thank you.	
15 MR. DELANEY: Let's go off the record for a second.	
16 (Discussion held off the record.)	
17 Q. BY MR. DELANEY: Back on the record. So you can't	
18 rule out that White-Out correction tape had been applied to	
19 the motion to exceed fee cap and the Apple Pay order on top	
20 of Judge Introcaso's marginal handwritten orders when you	
21 reviewed it on April 26th?	
22 MR. WAYSTACK: Objection to the form.	
23 A. I just don't remember. I know that there was an	
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1 emphasis on the word "only" and I remember thinking, I ought	
2 to allow personal checks as well, so I wrote that in my	
3 order. I remember the "only," but I cannot guarantee you	
4 that I saw it in Judge Introcaso's handwriting or typed on a	
5 Notice of Decision in the file.	
6 Q. You just don't know one way or the other if the	
7 White-Out correction tape had been applied before or after	
8 April 26th; is that right?	
9 MR. WAYSTACK: Objection to form.	
10 A. I can't -- I can't be sure one way -- I can't be	
11 sure one way or the other, no, I'm sorry.	
12 Q. And I also understand, your Honor, that you can't	
13 rule out the possibility that you might have applied the	
14 White-Out correction tape to the March 12th orders when you	
15 reconsidered them on April 26th?	
16 MR. WAYSTACK: Objection to the form.	
17 A. I cannot be a hundred percent morally certain that	
18 I didn't do it as part of the April 26th de novo order. I'm	
19 quite certain I did not, but can I tell you with absolute	
20 moral certainty that I didn't, no, I can't.	
21 Q. Your Honor, other than your present memory, is	
22 there any other source of information like notes or entries	
23 by way of example that you could look to to refresh your	

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1 MR. WAYSTACK: Objection to the form.		1 attention to page 2, JAI 196 Bates number. Do you see Judge	
2 A. If it's just me trying to figure out who's who, no,		2 Introcaso's handwritten marginal order on the motion to	
3 I don't think I have an obligation to save those. I crumble		3 exceed fee cap?	
4 them up and throw them away.		4 MR. WAYSTACK: Objection. Objection to form.	
5 Q. Your Honor, going back to your review of the		5 A. Sorry. Sorry, I'm violating my own rules. I'm	
6 Partello case file on April 26th, I think you agree that		6 stepping on your question. I'm sorry about that. I see it	
7 sometimes you can find prior judges' decisions quoted in two		7 here, yes.	
8 locations in the case file, the order itself and the Notice		8 Q. You recognize that handwriting as Judge Introcaso's	
9 of Decision; is that right?		9 handwriting?	
10 A. Correct.		10 A. I assume it is. It's been over a year since I've	
11 Q. Your Honor, could you review Introcaso 8?		11 looked at -- I don't have her handwriting memorized, but I	
12 MR. WAYSTACK: What number, Mike?		12 assume it's hers.	
13 MR. DELANEY: Eight.		13 MR. WAYSTACK: Move to strike.	
14 MR. WAYSTACK: Eight.		14 A. Oh, sorry.	
15 (Introcaso Exhibit 8 was marked.)		15 MR. WAYSTACK: That's all right.	
16 A. (Witness peruses document.) Yeah.		16 Q. Do you know if that handwritten marginal order was	
17 Q. Your Honor, this is a copy, a file copy of the		17 visible in the case file when you reviewed it on April 26th?	
18 Notice of Decision related to the motion to exceed fee cap;		18 A. As I sit here today, I don't remember. I know that	
19 is that correct?		19 somewhere I saw what her order was, but I can't tell you	
20 A. Yes.		20 whether I got it off the Notice of Decision or whether I saw	
21 Q. And for the record, there's some stamps and		21 it after I finished reading the motion.	
22 notations in the footer that I'm not going to ask you about,		22 Q. And you identified the case summary as a third	
23 but I take it you have no knowledge of how those got there?		23 possibility?	
	42		44
1 A. No. No, sorry.		1 A. Yes. And if I were looking -- if I were looking to	
2 Q. Do you have any present memory as to whether the		2 identify all of the Introcaso motions quickly, that's a place	
3 file copy of the Notice of Decision for the motion to exceed		3 I could have gone to just look at everything that has her	
4 fee cap was located in the case file on April 26th?		4 name on it on the case summary without looking at every	
5 A. No. What I will say in -- is that there are		5 single order that -- in the file.	
6 actually three places. If the case summary is included on		6 Q. Your Honor, could you please review Introcaso 20.	
7 the left-hand side of the file, sometimes the case summary		7 (Introcaso Exhibit 20 was marked.)	
8 has the text of the margin order there. So it could be in		8 A. Wait a minute. Jim, can you give me a hand, here?	
9 the case summary, it could be on the document itself, and it		9 I have 19 and 21.	
10 could be in the Notice of Decision here.		10 MR. BOFFETTI: Mike, I think there was one	
11 Q. And in your answer to the negative were you simply		11 exhibit -- let me see -- that we didn't use in Dabilis. I	
12 saying you don't -- you don't remember whether this Notice of		12 think it was 20. Let me see if I can find it.	
13 Decision was in the case file?		13 MR. DELANEY: I can share the screen if that's	
14 A. I don't remember.		14 easier, Jim.	
15 Q. Any reason to believe it would not have been in the		15 MR. BOFFETTI: Yeah. I don't remember. I thought	
16 case file as of April 26th?		16 we pulled that one out. I don't know if I have it.	
17 MR. WAYSTACK: Objection to the form.		17 MR. DELANEY: So let's go off the record for a	
18 A. I don't know. I can't think of any reason why it		18 second.	
19 wouldn't.		19 (Discussion held off the record.)	
20 Q. Your Honor, could you please review Introcaso 4?		20 MR. DELANEY: So let's go back on the record. Jim,	
21 (Introcaso Exhibit 4 was marked.)		21 are you ready?	
22 A. (Witness peruses document.) Yeah.		22 MR. BOFFETTI: Yeah.	
23 Q. This is a motion to exceed fee cap. Directing your		23 Q. BY MR. DELANEY: Your Honor, we have shared our	

45 1 screen over the Zoom deposition to display Introcaso 20 on 2 the screen, which is the cover sheet of Robin Partello's 3 judicial conduct complaint. Is that visible over the shared 4 screen? 5 A. Yes. 6 MR. DELANEY: And Dawn, if I could have you go ten 7 pages in. Thank you. 8 Q. Your Honor, do you see the Notice of Decision 9 related to the Apple Pay order? 10 A. I do. 11 Q. You can see Robin Partello's address at the top of 12 this Notice of Decision; is that correct? 13 A. Yes. 14 Q. And on this exhibit to the judicial conduct 15 complaint, we're seeing the copy of the Notice of Decision 16 that would have been mailed to the parties; is that right? 17 A. I think so. I assume so, yes. 18 Q. And the text of Judge Introcaso's marginal order on 19 the Apple Pay order was included on the Notice of Decision; 20 is that right? 21 A. Yes. 22 Q. Do you have a present memory as to whether the file 23 copy of this Notice of Decision was located in the file when	47 1 you reviewed it on April 26th? 2 A. On April 26th I know that I read the motion, so the 3 motion itself was in the case file. And if that's the 4 motion, it was in the case file. 5 Q. But you don't know whether Judge Introcaso's 6 handwritten marginal order at the bottom of the second page 7 of the motion was visible or not when you read the motion; is 8 that right? 9 MR. WAYSTACK: Objection to form. 10 A. I can't remember with absolute certainty. What 11 I've said before is that I remember seeing the word "only" 12 capitalized, and I adjusted that order a little bit, but I 13 can't be sure as I sit here today. 14 Q. And, your Honor, I regret the repetition in the 15 questions, but there was some value in asking you the 16 questions related to the two motions separately. 17 Directing your attention back to your April 26th 18 order on Introcaso 17, your Honor. 19 A. Yes. 20 Q. I understand, then, in your order when you said you 21 had reviewed the two March 12, 2019, orders regarding the GAL 22 fee cap and GAL payment method, you can't be certain where 23 you reviewed those orders; is that right?
46 1 you reviewed it on April 26th? 2 A. I do not. 3 MR. DELANEY: And Dawn, if you can scroll forward 4 three more pages to the motion itself. 5 Q. Your Honor, we are now displaying a Further Motion 6 for Instruction Regarding GAL Supplemental Retainer Payment 7 by Robin Partello with index 35 in the bottom right margin. 8 Do you see that? 9 A. Yes. 10 Q. It's got a date stamp of March 1, 2019, at the top 11 as the date of filing? 12 A. Yeah. 13 Q. You understand this to be the Apple Pay motion; is 14 that right? 15 A. Yes. 16 Q. Looking to the second page of the motion, do you 17 see the handwritten marginal order with Judge Introcaso's 18 signature and name stamp applied -- 19 A. Right. 20 Q. -- to the motion? 21 A. Sorry. I see that. 22 Q. Do you know whether this Apple Pay motion with the 23 handwriting marginal order was located in the case file when	48 1 MR. WAYSTACK: Objection to form. 2 A. As I sit here today, that much later I cannot be a 3 hundred percent certain whether I read them off the case 4 summary, whether I read them off the Notice of Decision, or 5 whether I read them in Judge Introcaso's handwriting at the 6 bottom of the motion. 7 Q. You indicated in the first paragraph that you had 8 reviewed all of the matters identified de novo. 9 A. Correct. 10 Q. What does de novo mean? 11 A. I take it to mean that I review it as I would for 12 the first time without any deference or consideration to what 13 the prior judge did. 14 Q. You decide an issue anew without deference to a 15 prior court decision; is that right? 16 A. Yes, basically. 17 Q. Would another way to say it be that you 18 reconsidered all of those motions on April 26th? 19 MR. WAYSTACK: Objection to the form. 20 A. Well, I basically viewed the motion to get rid of 21 the GAL as kind of a motion to reconsider. That's in 22 substance what it was. Partello wanted to get rid of the GAL 23 on the basis that the judge who approved the appointment had

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1 recused herself.		1 and I thought that in this case I would make that generally	
2 So the main issue that -- the thing that brought		2 accepted form of payment available if she wanted -- you know,	
3 this before me was, in essence, a motion to reconsider,		3 if Apple Pay had a personal check option or her bank had a	
4 although it was phrased differently following the recusal.		4 bill pay option, most guardians ad litem will take a personal	
5 So I viewed in my mind that I was doing a de novo		5 check, so I wanted to open that additional avenue for	
6 review, not really reconsideration, because the only new --		6 payment.	
7 the only new facts or evidence presented was what Judge		7 Q. You also believed that Ms. Partello had indicated	
8 Introcaso said in her recusal motion. So I'm not really sure		8 in her objection related to the Apple Pay motion that she	
9 I would agree that it was a reconsideration --		9 personally did not use personal checks?	
10 Q. Fair enough.		10 A. I think that -- I don't have her objection in front	
11 A. -- to the extent that the -- in the initial		11 of me, but I got it somewhere and I wanted to at least	
12 appointment of the guardian ad litem was being challenged on		12 acknowledge that I had thought about that and that I	
13 the newly revealed information about the relationship with		13 understood she didn't, but that's how everybody does business	
14 Judge Introcaso.		14 with guardians ad litem, so I'm giving her that option if she	
15 Q. You seem to be indicating that while you		15 wants to find a way to get a personal check from somebody	
16 reconsidered the issues anew, you believe the better term for		16 else or use her bank or something.	
17 your judicial review was a de novo consideration of the		17 Q. Her notification to the court of not using personal	
18 listed orders?		18 checks could be a reason why personal checks was not included	
19 MR. WAYSTACK: Objection to form.		19 in the original order that you reviewed de novo; is that	
20 A. I understood that the -- I believed that the		20 right?	
21 appropriate remedy after a judge recuses herself is an		21 MR. WAYSTACK: Objection to the form.	
22 independent review of the orders by an independent judge, not		22 A. I don't know. All I know is somewhere along the	
23 wholesale vacating everything. And so I -- I believed I was		23 way I thought that I would open -- I would open for her an	
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1 doing the de novo review, and the motion to remove the		1 opportunity that every other GAL opens. I wanted to treat	
2 guardian ad litem, it begged a reconsideration of the initial		2 her like any other parent who was using a GAL.	
3 appointment, but the relief was in my view a de novo review		3 Q. In the second paragraph of your order you denied	
4 as to whether I would have approved Judge -- whether I would		4 the motion to dismiss/remove GAL for the reasons you stated;	
5 have approved if -- if Master DalPra's recommendation of that		5 is that right?	
6 GAL had landed in my signing pile, would I have approved it		6 A. Yes.	
7 independent of and not knowing anything about Judge		7 Q. Your Honor, in the fourth line of your order on	
8 Introcaso, and the answer was yes. So I denied her motion to		8 Introcaso 17, there appears to be White-Out correction tape	
9 remove the GAL.		9 applied at the end of the fourth line.	
10 Q. In the first paragraph of your order you also made		10 A. Yes.	
11 one clarification to the Apple Pay order.		11 Q. Who applied that White-Out correction tape to your	
12 A. Yes.		12 April 26th order?	
13 Q. What did you do?		13 A. I'm sure it was me. I mean, I -- I assume it was	
14 A. I added the option of paying with a personal check.		14 me.	
15 Q. You also noted that you knew the respondent did not		15 Q. Can you describe your use of White-Out correction	
16 use personal checks at that time; is that correct?		16 tape as a judge?	
17 A. Yes.		17 A. I have it -- I have one of those little tape	
18 Q. Where did you obtain that information?		18 dispensers with me everywhere I write and I use it -- usually	
19 A. I believe it was from Ms. Partello's objection that		19 if I'm writing something, and then while I'm writing it, if I	
20 she filed -- there was some back and forth and I think I got		20 make a word wrong or I scribble something or mess it up, I	
21 it from the objection. I don't want to get too deep into the		21 white it out and write over it, or if I'm in court and the	
22 weeds of why I did what I did, but the bottom line is I		22 parties are saying -- you know, are sort of agreeing to	
23 almost -- generally guardians will accept personal checks,		23 something and I write it down and then they change something,	

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1 I'll make that change. But it's really -- I use it all the 2 time.		1 guardian ad litem prior to the disclosure. 2 A. That's what she alleges in her petition -- in her 3 motion.	
3 Q. Is it fair to say in your experience that judges 4 and clerks use White-Out correction tape in the 9th Circuit?		4 Q. Please review Introcaso 31. 5 (Introcaso Exhibit 31 was marked.)	
5 MR. WAYSTACK: Objection to the form.		6 A. (Witness peruses document.) Okay.	
6 A. I can't speak for the clerks. I can only speak for 7 myself and what little I've observed of what other judges do. 8 But I know myself, I use it while I'm writing stuff, usually 9 to correct things, if I say something wrong or if I -- if I 10 write, you know, you've got seven days and then I get another 11 couple lines in and I say, no, it's going to be 14 days, you 12 know, I'll White-Out out the seven and write 14 right in 13 there. Something like that.		7 Q. This is an objection by the petitioner, David 8 Campbell, to the motion to remove the guardian ad litem? 9 A. Yes.	
14 Q. Are you aware of any rules or policies that apply 15 in the 9th Circuit when a judge uses White-Out correction 16 tape to make corrections?		10 Q. Time stamped as received on April 16th of 2019? 11 A. Yes.	
17 A. No.		12 Q. Did you have an opportunity to review that 13 objection before issuing your order on April 26th?	
18 Q. You did not feel the need to initial your use of 19 White-Out correction tape on this order?		14 A. I did.	
20 A. No.		15 Q. Did you take Ms. Partello's assertions in her 16 motion into consideration when deciding to conduct your de 17 novo review of the orders involving Judge Introcaso?	
21 MR. WAYSTACK: Objection to form.		18 A. Yes.	
22 A. My answer is no.		19 Q. Please review Introcaso 32. 20 (Introcaso Exhibit 32 was marked.)	
23 Q. You did not see the need to date or specify a time		21 A. (Witness peruses document.) Okay.	
	54	22 Q. This is an order dated May 10, 2019, that you 23 issued on several pending motions?	
1 when the White-Out correction tape was applied to the surface 2 of the document?			55
3 A. No --		1 A. Yes.	
4 MR. WAYSTACK: Objection to form.		2 Q. Just curious, your Honor, on the use of sort of 3 yellow paper versus white paper, how do judges approach that?	
5 A. Sorry, no.		4 A. My understanding is that we generally have our 5 orders printed on yellow paper. I just think -- I think 6 because it makes it easier when you're looking through a file 7 to find the last order that a judge wrote. So orders 8 generally go on yellow paper in the family division.	
6 Q. Could you please review Introcaso 30, your Honor? 7 (Introcaso Exhibit 30 was marked.)		9 Q. Do you know who printed this order for you?	
8 A. (Witness peruses document.) Yeah.		10 A. I believe I printed it myself.	
9 Q. Is this the motion to remove Kathleen Sternenberg 10 as guardian ad litem to which you were speaking?		11 Q. And do you have like a separate bin in the 12 photocopier that always has yellow paper in it or do you have 13 to sort of shove it in there before you print?	
11 A. I believe it is, but -- yeah, I believe it is, yes.		14 A. Well, it depends where I did this. If I did it in 15 Nashua, I am -- yeah, in Nashua there's a big copier/scanner 16 machine and then there was an HP printer next to it, and I 17 think the printer had yellow paper in it all the time.	
12 Q. And she references Judge Introcaso's recusal in 13 paragraph two of the motion?		18 Q. Is that a rule or policy of the court or would you 19 simply describe it as a best practice?	
14 A. Yes.		20 A. I've never seen anything in writing that says 21 orders go on yellow paper, and nobody ever told me to always 22 put orders on yellow paper. It's just that's how I saw it 23 done, and so I stayed consistent with that as best I could.	
15 Q. And then she again references the judge ruling on 16 the motions related to a guardian ad litem who was her best 17 friend in paragraph 12?			
18 A. Yes.			
19 Q. Paragraph 13 discusses disclosure of conflict of 20 interest?			
21 A. Yes.			
22 Q. And in paragraph 15, Ms. Partello indicated that 23 Judge Introcaso had ruled on several motions related to the			

	57		59
1	Q. Please review Introcaso 33.	1	(Introcaso Exhibit 35 was marked.)
2	(Introcaso Exhibit 33 as marked.)	2	A. (Witness peruses document.) That appears to be the
3	A. (Witness peruses document.)	3	case, yes.
4	Q. Is this the file copy of the Notice of Decision	4	Q. Do you know when court administrators or clerks do
5	related to your May 10th order that we just reviewed?	5	filing in relation to when they process orders?
6	A. It appears to be, yes.	6	A. No.
7	Q. And there's a seven-day time lag in processing this	7	Q. Please review Introcaso 36, your Honor.
8	order after you issued it; is that right?	8	(Introcaso Exhibit 36 was marked.)
9	A. Yes.	9	A. (Witness peruses document.) Okay.
10	Q. Is it the general practice to refer the order from	10	Q. This is an order related to a forensic
11	processing on the day that you issue your order?	11	psychological evaluation of Ms. Partello; is that correct?
12	A. Well, when I issue the order I put it -- if I issue	12	A. Yes.
13	an order, I put it in the signing pile. If it's something	13	Q. There's another use of White-Out correction tape
14	that I want to go out quickly, I put the word -- I put a	14	applied to this order?
15	Post-It note that says "expedite" on it.	15	A. I see it, yes.
16	Q. In your experience, how do the clerks receive	16	Q. Do you know who applied that White-Out correction
17	orders that you place in the signing pile?	17	tape to this order?
18	A. My understanding is they bring a cart up from the	18	A. I'm quite sure I did.
19	first floor with the elevator and then all the stuff that's	19	Q. There's White-Out correction tape applied to the
20	in the completed, ready-to-be-processed pile, they put them	20	eighth line on page 1; is that correct?
21	on the cart and they take them away.	21	A. I see, yes, "process."
22	Q. So they take those away for processing. Is it your	22	Q. And there's White-Out correction tape applied to
23	experience that that happens on a daily basis?	23	line two on page 2?
	58		60
1	A. I don't know. It happens regularly, but I -- I	1	A. Correct.
2	would say -- I mean, again, based on my -- you know, it's a	2	Q. Why were you recommending a full psychological
3	year ago. They were pretty regular. If the pile got big, it	3	evaluation of Ms. Partello?
4	would disappear. I don't remember seeing a big pile sitting	4	A. The guardian ad litem had recommended it.
5	there for a long time, but yeah, I think probably -- I don't	5	Q. Do you recall what the basis for that was?
6	know. I can't be sure.	6	A. I'm not really -- at this point I -- I will say I
7	Q. But it does seem fairly common, at least in this	7	think this order I wrote on the bench. I really don't want
8	case, that it can take up to a week for a Notice of Decision	8	to -- I think the case is still pending. I -- this was a
9	to get out of the courthouse; is that right?	9	matter of some controversy. I really -- I really don't feel
10	MR. WAYSTACK: Objection to the form.	10	comfortable getting into my thought process talking about
11	A. Yes. In what you've shown me so far, it can take a	11	these two counts.
12	week, yeah.	12	Q. I'm going to defer to your judgment on that, your
13	Q. Please review Introcaso 34, your Honor.	13	Honor. We have no desire to complicate the outcome of this
14	(Introcaso Exhibit 34 was marked.)	14	matter.
15	A. (Witness peruses document.) Yeah.	15	A. I just -- but I will say this order was written on
16	Q. This appears to be an order dated May 20, 2019,	16	the bench. It looks like something I did during a hearing
17	regarding a continuance at index No. 50?	17	after hearing from people, and I believe I wrote it on the
18	A. Yes.	18	bench as opposed to a piece of signing, but I really don't
19	Q. You issued that order?	19	want to get any deeper into the facts of the case or why I
20	A. I did.	20	did what I did.
21	Q. Looking to Introcaso 35, this is an instance where	21	Q. Introcaso 37 is the Notice of Decision related to
22	the Notice of Decision was processed on the next day; is that	22	your May 24th, 2019 order on pending motions?
23	right?	23	(Introcaso Exhibit 37 was marked.)

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1 A. (Witness peruses document.) Yes, and it says the 2 court -- or my order refreshes my recollection now. There 3 was a status conference motion review hearing on May 24th. 4 So I wrote this in court, and I guess they sent it 5 out, then they processed it.		1 pending motions? 2 A. Yes. 3 Q. And that order was processed two days later on June 4 19th? 5 A. That's what it says, yes.	
6 Q. In your experience is it more likely that an order 7 will be processed on the same day when a hearing is held as 8 opposed to when a motion is reviewed in your chambers without 9 the court having held a hearing on the motion?		6 MR. DELANEY: For the benefit of our stenographer, 7 your Honor, I recommend that we take a quick break. 8 A. Okay. Thank you. 9 (Recess taken.)	
10 MR. WAYSTACK: Objection to form.		10 MR. DELANEY: Back on the record. Dawn, could you 11 display for his Honor a visual of calendar month January 12 2020?	
11 A. In Nashua in 2019, if I had a hearing and wrote an 12 order from the bench, I would hand it to the clerk who was 13 with me and sometimes, if I recall, they would process it 14 right there from their -- from their chair in the courtroom, 15 but -- and that -- and I don't know if that happened in this 16 case, but sometimes when I write an order from the bench at 17 or after a hearing, I hand it straight to the clerk with the 18 file and they take care of it.		13 (Calendar displayed on screen.) 14 Q. BY MR. DELANEY: Your Honor, you had indicated that 15 you primarily handled this case from the time of Judge 16 Introcaso's recusal through calendar year 2019. Was there a 17 reason why you no longer handled the case in 2020?	
19 Q. Do you refer to that clerk in the courtroom as a 20 courtroom clerk?		18 A. My assignment changed from Nashua and Merrimack to 19 Milford and Merrimack, so I was no longer sitting in Nashua.	
21 A. Courtroom clerk, court assistant, monitor. I don't 22 know what their --		20 Q. And is it fair to say you had no involvement in 21 this case after that transition of judicial assignments?	
23 Q. And on the three digits on this Notice of Decision,		22 A. Correct, unless there was a leftover piece of 23 writing or something, which I don't think there was. Like if	
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1 your Honor, 567, same answer, that you can't -- you can't 2 identify those --		1 there had been a hearing in December and I didn't finish the 2 order until January, that's the only explanation, but I was 3 sitting in Milford and Merrimack in January of 2020 so I had 4 nothing more to do with that case.	
3 A. I don't know what -- I don't know who those codes 4 apply to.		5 Q. Your Honor, appreciating that this is a pending 6 case, I'm going to proceed cautiously with the following 7 questions and defer to your judgment on whether you can 8 answer them.	
5 Q. Your Honor, could you please review Introcaso 38? 6 (Introcaso Exhibit 38 was marked.)		9 Did you have an opportunity to interact regularly 10 with Ms. Partello while you were handling the case?	
7 A. (Witness peruses document.) Yes.		11 A. Only in court hearings.	
8 Q. This is an order that you issued in the case dated 9 May 31st of 2019; is that correct?		12 Q. Was it a large case compared to other parenting 13 cases?	
10 A. Yes.		14 A. In 2019 I didn't have much to compare it to, so if 15 you define large, I can try to answer it better.	
11 Q. Please review Introcaso 39. 12 (Introcaso Exhibit 39 was marked.)		16 Q. How many hearings do you think you presided over?	
13 A. (Witness peruses document.) Yes.		17 A. I would say probably three.	
14 Q. It appears that this Notice of Decision was issued 15 four days after you made your ruling; is that correct?		18 Q. And -- I'm just going to leave it at that. I'm 19 going to leave it at that.	
16 A. That is -- that's what it says.		20 My recollection of your testimony, your Honor, is 21 that in January 2020, you were working Monday and Wednesday 22 in Nashua; is that right?	
17 Q. Last exhibit, and then I'm going to recommend we 18 take a short break, your Honor.		23 A. No. In January of 2020, I no longer worked in	
19 A. Okay.			
20 Q. Please review 40 and 41. 21 (Introcaso Exhibits 40 and 41 were marked.)			
22 A. (Witness peruses document.) Yes.			
23 Q. That's an order dated June 17th, 2019, by you on			

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1	Nashua.	1	A. Yes.
2	Q. Oh, got it. I'm mixing that up with what you did	2	Q. What did you do when you received them?
3	in 2019. Excuse me.	3	A. I believe I called Judge Introcaso.
4	A. Okay.	4	Q. Do you have a present memory of what courthouse you
5	Q. When were you assigned to Nashua in January 2020,	5	were sitting at when you received them?
6	if at all, based on your statements?	6	A. No. I could find out, but I don't know whether it
7	A. I was cleaning out my office and finishing up	7	was Milford or Merrimack.
8	writing. I never sat in Nashua for a court case in 2020.	8	Q. Do you recall what time of day you read the e-mails
9	Q. If I wanted to identify your physical location from	9	in relation to the 10:12 a.m. time stamp on the first e-mail?
10	your calendar during the week of January 6th, 2020, could you	10	A. I don't remember when I read them, no.
11	do that by memory or reference to online calendars?	11	Q. But you do believe it was on the same day, January
12	A. I could look at Odyssey or my Outlook to see	12	9th?
13	whether I was in Milford or Merrimack in January of 2020.	13	MR. WAYSTACK: Objection to form.
14	Q. Were you cleaning out your office in Nashua during	14	A. I'm quite sure I read them on January 9th, and I
15	working hours or were you doing that after hours?	15	called Judge Introcaso on the same day. I don't remember
16	A. It would have been on weekends. It was a	16	what time of day it was.
17	combination of cleaning out my office and finishing up	17	Q. Please describe the conversation that occurred.
18	writing assignments from Nashua from stuff that had gone	18	A. I think she asked if I knew or -- if I knew about
19	under advisement in December.	19	orders being whited out in the file, and I said, no, I don't.
20	Q. And unless --	20	I didn't know anything about it. I said no. I think Judge
21	A. I'm sorry.	21	Introcaso thought that perhaps Robin Partello had done it,
22	Q. Go ahead.	22	and I think she shared that thought with me. And it was a
23	A. So basically it was weekends and before work or	23	pretty quick conversation, I think, because I had to be
	66		68
1	after work I might drive some files to Nashua, drop them off	1	somewhere and she wanted to hear from me today.
2	in the clerk's office, and then go to Milford or Merrimack	2	So I think that's it. I don't remember how long
3	where I was sitting.	3	the conversation was, but that was -- I know I called her
4	Q. That's helpful. Looking at Introcaso 22 and 23,	4	back that day, I know I said I didn't know anything about it,
5	your Honor. Take a minute to review those.	5	and she mentioned she thought Robin Partello might have done
6	(Introcaso Exhibits 22 and 23 were marked.)	6	it.
7	MR. DELANEY: Off the record.	7	Q. Do you remember anything specifically about your
8	(Discussion held off the record.)	8	conversation regarding Judge Introcaso thinking Robin
9	Q. BY MR. DELANEY: Back on the record.	9	Partello might have done it?
10	A. Yes, I have 22 and 23.	10	A. No, not really. Just she thought she might have
11	Q. Have you had an opportunity to review them, your	11	done it and, you know, I don't remember what I said at that
12	Honor?	12	point.
13	A. (Witness peruses document.) Yes.	13	Q. Did you -- do you recall discussing Robin Partello
14	Q. Introcaso 22 is an e-mail that Judge Introcaso sent	14	with her at that time?
15	to a group of judges and clerks on January 9th with a time	15	A. I don't know. I've seen Robin Partello, you know,
16	entry of 10:12 a.m. on this exhibit. Do you see that?	16	in court a few times, and I don't remember exactly what I
17	A. Yes.	17	said, but, you know, I might have said -- I probably said it
18	Q. And then Introcaso 23 is a follow-up e-mail with	18	was possible that she could have done it. I don't know.
19	her correcting the subject line of the e-mail. Do you see	19	MR. WAYSTACK: I move to strike that portion of the
20	that?	20	answer as being nonresponsive, probably.
21	A. Yes.	21	A. Okay. All right.
22	Q. Do you recall receiving those e-mails on January	22	Q. Do you have any memory of discussing that with
23	9th?	23	Judge Introcaso, the possibility that she could have done it?

<p>1 A. I have a vague recollection of talking about that, 2 yes. I don't remember what words I used or what I said. 3 Q. And was the discussion surrounding the possibility 4 that she could have done it or the possibility that she could 5 not have done it?</p> <p>6 MR. WAYSTACK: Objection to form.</p> <p>7 A. I don't remember. I think it was more about the 8 possibility that she could have done it.</p> <p>9 Q. Did you have any discussion with Judge Introcaso at 10 that time regarding your consideration of her orders, orders 11 de novo in the Partello case?</p> <p>12 A. Not on January 9th, no.</p> <p>13 Q. Is there anything else that Judge Introcaso said to 14 you during that first call that we haven't discussed?</p> <p>15 A. I don't remember.</p> <p>16 Q. Is your memory exhausted at present, your Honor, 17 regarding what conversations took place during that phone 18 call?</p> <p>19 A. I would say it is, yes.</p> <p>20 Q. Is there any other source of information you could 21 look to by way of phone logs or notes that might refresh your 22 recollection of what conversations took place at that time?</p> <p>23 A. I know I didn't take notes during that phone call,</p>	<p>69</p> <p>1 Q. Did you speak to Judge Introcaso regarding the 2 judicial conduct complaint that Robin Partello had filed? 3 A. I don't recall. 4 Q. And so I take it you're not sure if you spoke to 5 her on any occasion one way or the other regarding the JCC 6 complaint filed by Ms. Partello?</p> <p>7 A. The only possibility that I can think of is there 8 was a brief period in December when she came back when I 9 said, hello, welcome back, and she asked me to get a present 10 to Judge Gorman in Milford. So I saw her late -- I don't 11 remember us talking about the Partello/JCC case, it was more 12 just welcome back and can you get this Christmas present to 13 Judge Gorman in Milford.</p> <p>14 So I delivered a present, I talked with her in 15 December when she came back, and I've had no conversations 16 with her after January 9th, 2020.</p> <p>17 Q. Have you had any conversations with Clerk Julianne 18 Lodes regarding the JCC complaint or the Partello case?</p> <p>19 A. No, not after -- never about the JCC case. I think 20 Clerk Lodes sat with me during a couple hearings in 2019, but 21 not about Judge Introcaso or the JCC complaint.</p> <p>22 Q. Have you had any conversations with Clerk Nancy 23 Dabilis regarding the Partello/JCC complaint or the Partello</p>
<p>70</p> <p>1 and I do not believe I sent a follow-up e-mail or anything 2 afterwards.</p> <p>3 Q. Did you have an opportunity to discuss this matter 4 with Judge Introcaso on another occasion?</p> <p>5 A. I believe that after I issued my de novo order, 6 sometime in 2019, I did poke my head in the room and say, you 7 know, just so you know, you know, this is what I did 8 afterwards, but it would have been shortly after I issued the 9 de novo order in 2019. I don't recall discussing the de novo 10 order with Judge Introcaso on January 9th, 2020.</p> <p>11 Q. Was your purpose in doing that simply to advise 12 Judge Introcaso that the issues upon which she had recused 13 herself had been considered de novo by the Court?</p> <p>14 MR. WAYSTACK: Objection to form.</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any conversations with Judge Introcaso 17 regarding the Partello case after January 9, 2020?</p> <p>18 A. No.</p> <p>19 Q. Other than the conversation that you just described 20 in 2019 and the conversation that you described on January 9, 21 2020, do you have any recollection of speaking to Judge 22 Introcaso at any other time regarding the Partello case?</p> <p>23 A. Not regarding the Partello case, no.</p>	<p>70</p> <p>1 case?</p> <p>2 A. Certainly not the JCC complaint. I can't be 3 certain that Nancy wasn't a courtroom clerk during one of the 4 hearings. There's day-to-day handling of the case, and I 5 can't be sure which clerks I talked to about the day-to-day 6 handling of the case in 2019, but I've not spoken with any of 7 them about the JCC complaint.</p> <p>8 Q. Thank you, your Honor, and I understand your 9 answer. Have you had any conversations with Clerk Sherry 10 Bisson regarding the Partello/JCC complaint or the Partello 11 case?</p> <p>12 A. No, other than -- other than -- actually, I don't 13 even think I talked to her during -- in 2019 handling the 14 case, so I'm going to say no.</p> <p>15 Q. Did you speak with General Counsel Mary Ann Dempsey 16 in January 2020 concerning the Partello case?</p> <p>17 A. I think it might have been February, but yes.</p> <p>18 Q. What makes you think it might have been February?</p> <p>19 A. I checked my e-mails and there was an e-mail from 20 her on like February 7th asking for a call. But it could 21 have been January. I don't know. It was early in the year.</p> <p>22 Q. Do you have a copy of that e-mail at present?</p> <p>23 A. I could get -- I could get one, yes. I could</p>

<p style="text-align: right;">73</p> <p>1 probably call it up on my computer. (Brief pause.) Are you 2 waiting for me to call it up?</p> <p>3 Q. I am, your Honor, I'm sorry.</p> <p>4 A. Oh, okay. I'm going to do that.</p> <p>5 Q. Please do so, and my apologies.</p> <p>6 A. Okay. I'm reading an e-mail February 7th, it's 7 addressed to me, Judge King, and Judge Ashley. I'm helping 8 Judge King and Judge Ashley relative to understanding some 9 alterations to a marital file that -- I'm talking too fast. 10 I'm sorry.</p> <p>11 If you could give me a call -- so she's asking for 12 a call at her number and it's February 7th. So that's the 13 only basis I have to think it was February 7th and not 14 January.</p> <p>15 Q. You don't have any recollection of speaking to her 16 before you received that e-mail on February 7th?</p> <p>17 A. No.</p> <p>18 Q. What did you do when you received the e-mail?</p> <p>19 A. I called her.</p> <p>20 Q. Please describe the conversation that you had with 21 her.</p> <p>22 A. She talked about the same topic that Judge 23 Introcaso brought up, which was that they were looking into</p>	<p style="text-align: right;">75</p> <p>1 order, but she also said -- you know, after I talked through 2 that possibility, she said, you know, there's a -- there's a 3 witness who saw the orders after that point, after that time, 4 so it couldn't have been you who did it.</p> <p>5 So at that point I didn't -- yeah, I just moved on.</p> <p>6 Q. And she specifically stated to you that it couldn't 7 have been you that did it?</p> <p>8 MR. WAYSTACK: Objection to form.</p> <p>9 A. Something to that effect, yes. It was that -- 10 there was a witness who saw those orders not whited out after 11 April of 2019, so it could not have been you. And I said, 12 okay, I don't -- I didn't feel the need to press the issue 13 any further, so that was it.</p> <p>14 Q. Your Honor, did she ever show you the White-Out 15 correction tape that had been applied to the orders in 16 question?</p> <p>17 A. No.</p> <p>18 Q. Did you ask to see them?</p> <p>19 A. No.</p> <p>20 Q. Did she volunteer to give them to you?</p> <p>21 A. I don't remember. I think the only thing that she 22 offered -- if I'd asked, I'm sure she would have given them 23 to me, but the only thing I thought about was my de novo</p>
<p style="text-align: right;">74</p> <p>1 who or how some orders got whited out, and, you know, I just 2 sort of said -- you know, we kind of talked about it and 3 tried to figure out why someone would white out orders. And, 4 you know, I said, I don't remember whiting out any orders, 5 but I was the person in charge of that file for most of 2019.</p> <p>6 You know, I started thinking and I said, you know, 7 the only possibility, the only possibility, and I think it's 8 remote, and I don't think I did it because I don't remember, 9 and I'm quite confident, is that if I did it, it would have 10 been part of the de novo order in April. I don't think I 11 did, but that's the one possibility that involves me that I 12 can think of.</p> <p>13 Q. When you were talking to her, your Honor, you 14 didn't have the case file with you, did you?</p> <p>15 A. I did not, and actually, I think what I said is -- 16 you're right, when I talked to her I said, I did a de novo 17 order, I looked at all the other stuff, and I think she might 18 have pulled it up and said over the phone, does April 20 -- I 19 think she gave me a date and I said, yeah, that date sounds 20 right for the de novo order.</p> <p>21 Q. Did she ask you to review any documents at the time 22 you were speaking with her?</p> <p>23 A. I think she offered to let me see the de novo</p>	<p style="text-align: right;">76</p> <p>1 order, and then once -- once it was clear there was a witness 2 who saw this stuff unchanged after April of 2019, I didn't 3 see the need to push the issue any further.</p> <p>4 Q. So your decision not to request access to the 5 orders was tied to General Counsel Dempsey's statement that 6 couldn't have been you that did this?</p> <p>7 MR. WAYSTACK: Objection to form.</p> <p>8 A. Yes, I accepted the idea that there was a witness 9 who saw the stuff not whited out after the one possible 10 instance where I thought -- I thought really hard about it, 11 and the one possible instance that came up that involved me 12 would have been that de novo order and nothing else.</p> <p>13 I mean, I never would have -- I know I didn't go in 14 and -- as a single transaction white out an order. I know I 15 didn't do that, but the one possibility was the de novo 16 order. And knowing there was a -- she didn't say who the 17 witness was or when they saw it, but knowing that the orders 18 were intact after the one possibility I thought of, I didn't 19 see a reason to go any further with it.</p> <p>20 Q. Did she share with you the identify of the witness?</p> <p>21 A. No.</p> <p>22 Q. Did she share with you any of the circumstances in 23 which the witness had alleged to have seen the orders in</p>

<p>1 original fashion?</p> <p>2 A. She did not.</p> <p>3 Q. How long did you speak to her at that time?</p> <p>4 A. Maybe five minutes, ten minutes maybe. I don't</p> <p>5 remember.</p> <p>6 Q. Did you take any notes at the time, your Honor?</p> <p>7 A. No.</p> <p>8 Q. Were you ever asked to review any written</p> <p>9 statements or notes from General Counsel Dempsey concerning</p> <p>10 your conversation with her?</p> <p>11 A. No.</p> <p>12 Q. I appreciate, your Honor, that you had some --</p> <p>13 A. Wait a minute. Wait a minute. I mean, I called</p> <p>14 her in October, but between -- if we're still talking about</p> <p>15 the February conversation, the answer is no.</p> <p>16 Q. And we were. That was the intent of the call. And</p> <p>17 I understand that you spoke to her in October, your Honor.</p> <p>18 Between the time you spoke to her on February 7th</p> <p>19 and the time you referenced speaking to her in October 2020,</p> <p>20 did you discuss this matter with General Counsel Dempsey at</p> <p>21 any time in between?</p> <p>22 A. The only time would have been e-mails related to a</p> <p>23 litigation hold request, and I think that happened in March.</p>	<p>77</p> <p>1 proceeding involving Judge Introcaso?</p> <p>2 A. No.</p> <p>3 Q. Is the next time you had a conversation about this</p> <p>4 matter, excepting the communications regarding the litigation</p> <p>5 hold, excepting those conversations, is the next time you</p> <p>6 spoke to anyone about this matter when you spoke to General</p> <p>7 Counsel Dempsey in October 2020?</p> <p>8 A. That is correct.</p> <p>9 Q. Tell me what happened.</p> <p>10 MR. BOFFETTI: So at this point, Mike, I would like</p> <p>11 to go off the record and have a chance to talk to Judge Derby</p> <p>12 about that conversation, because I think there's some</p> <p>13 attorney/client issues that I just want to sort through.</p> <p>14 MR. DELANEY: Sure.</p> <p>15 (Discussion held off the record.)</p> <p>16 MR. BOFFETTI: Thank you for giving me a moment to</p> <p>17 sort through a couple of issues here. We're all set to go.</p> <p>18 You can continue your questions.</p> <p>19 BY MR. DELANEY: Your Honor, let me restart it this</p> <p>20 way. Did you have an opportunity to read the statement of</p> <p>21 formal charges that was issued against Judge Introcaso in the</p> <p>22 JCC proceeding?</p> <p>23 A. I read them in a link provided by the Union when I</p>
<p>78</p> <p>1 She asked for some stuff, I did a search of my e-mails, and I</p> <p>2 sent her a screenshot of the e-mails that I had preserved.</p> <p>3 Q. But other than -- go ahead.</p> <p>4 A. Other than that e-mail communication, nothing.</p> <p>5 Q. Were you aware that the JCC was conducting a</p> <p>6 preliminary investigation at some point in time after your</p> <p>7 February 7th call with General Counsel Dempsey and the time</p> <p>8 you spoke to her again in October 2020?</p> <p>9 A. I believe that the e-mail from Attorney Dempsey</p> <p>10 that talked about the litigation hold also mentioned the JCC</p> <p>11 complaint. I don't remember whether she talked about the JCC</p> <p>12 complaint in the first phone call, and I'm going to call it</p> <p>13 February 7th. I could be wrong, but I don't recall her</p> <p>14 mentioning the JCC in the February 7th phone call, but I</p> <p>15 was -- I think I was aware of the JCC by the time of the</p> <p>16 litigation hold request, because it was mentioned in I think</p> <p>17 that letter -- in the e-mail.</p> <p>18 Q. Did you speak to Attorney Philip Waystack at any</p> <p>19 point in time in connection with the JCC confidential</p> <p>20 proceeding?</p> <p>21 A. No.</p> <p>22 Q. Did you speak to anybody else who may have been a</p> <p>23 representative of the JCC regarding a JCC confidential</p>	<p>80</p> <p>1 saw it online.</p> <p>2 Q. So you read an article about it in the Manchester</p> <p>3 Union Leader that had a link to the online statement of</p> <p>4 formal charges?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever print a hard copy of the statement of</p> <p>7 formal charges?</p> <p>8 A. I did.</p> <p>9 Q. When did you do that?</p> <p>10 A. The day -- I'm going to say it was October 22nd or</p> <p>11 23rd. I clicked the link and it had a PDF so I printed it.</p> <p>12 Q. Where is the copy of the document that you printed</p> <p>13 from the PDF?</p> <p>14 A. It's in my car.</p> <p>15 Q. Did you make any notations or other markings on</p> <p>16 that document, your Honor?</p> <p>17 A. I did.</p> <p>18 Q. So I'm just going to state for the purposes of the</p> <p>19 record that I'd like that document to be preserved and</p> <p>20 produced.</p> <p>21 MR. BOFFETTI: Sure. It will certainly be</p> <p>22 preserved and we can take a look at it to see if there's any</p> <p>23 issues that we see with it, but he will -- he has it with him</p>

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1 today, so we can get it before he leaves and then we'll take 2 a look at it and see if there's any issues we have with it. 3 Q. What was your reaction having read the statement of 4 formal charges, your Honor?		1 A. I'm going to say 8:30, 8:45, something like that. 2 Q. In the morning? 3 A. Yes.	
5 A. I was -- I was surprised to see that they thought 6 that Judge Introcaso did the whiting out. 7 Q. Why were you surprised to see that? 8 A. It didn't make sense to me that she would have done 9 it at that time. 10 Q. Why didn't it make sense to you? 11 A. Because it would have served no purpose. 12 Q. Can you describe your relationship with Judge 13 Introcaso as a fellow judge?		4 Q. So that was shortly after your workday would have 5 begun? 6 A. Yes. 7 Q. Please describe the conversation that you had with 8 her. 9 A. So I called her up and I said, you know, I was 10 surprised to see that Judge Introcaso is -- has been accused 11 of this, accused of doing this. I was very surprised. And I 12 had a question about one of the paragraphs of the statement 13 of the charges.	
14 A. Yeah. I mean, we're cordial. I'd say we're 15 friendly, but I did not know her before I became a judge and, 16 you know, our offices were next door, so she would -- I would 17 go to her for advice on things. She did some of the, you 18 know, sort of the informal training in December of 2018. So 19 I think it's a good relationship. I view her kind of as a 20 mentor and a colleague. 21 Q. After you read the statement of formal charges, I 22 understand at some point in time you called General Counsel 23 Dempsey?		14 Q. Do you have a personal memory of what paragraph it 15 is you wanted to question General Counsel Dempsey about? 16 A. I believe it was the paragraph where they talked 17 about -- it was, it was the paragraph where they quoted 18 something that Sherry Bisson said. 19 MR. DELANEY: Dawn, could you please unshare your 20 screen and reshare it with a copy of the statement of formal 21 charges? 22 (Statement of formal charges shared on screen.) 23 MR. DELANEY: If you could go to paragraph 30,	
1 A. That's correct. I sort of read it over the weekend 2 and kind of digested it, and I called Attorney Dempsey, I 3 believe the Monday -- on a Monday. 4 MR. DELANEY: Dawn, I haven't prepped you for this, 5 but can you quickly pull up an October 2020 calendar and 6 share your screen? 7 MR. WAYSTACK: Of course she can. 8 MR. DELANEY: The delay on this is my fault, your 9 Honor. 10 MR. WAYSTACK: You've been pretty efficient, 11 Michael. You don't have to apologize. 12 Q. BY MR. DELANEY: Your Honor, do you have an iPhone 13 or a mobile device handy? 14 A. Yes. 15 Q. Could I ask you just to see if you can reference a 16 calendar for October 2020? 17 A. Yeah. I have to go monthly. Okay. I've got it. 18 (Calendar displayed on screen.) 19 Q. And Dawn is helping us on the screen as well. Do 20 you recall which Monday it was that you spoke to General 21 Counsel Dempsey in October of 2020? 22 A. It would have been the 26th. 23 Q. What time of day did you call her?	82	1 Dawn. 2 Q. Your Honor, I'd ask you to read paragraph 30 for a 3 moment. 4 A. Yes, and that's the -- that's the paragraph I had a 5 question about. Clerk Bisson testified that she has a clear 6 recollection of seeing Judge Introcaso -- I'll slow down. 7 I'm sorry. 8 Q. Go right ahead. 9 A. Clear recollection of seeing Judge Introcaso's 10 original handwriting on this Apple Pay order on January 6, 11 2020. Subparagraph A: Specifically, Clerk Bisson states 12 that the judge, quote, opened the file to the Apple Pay order 13 and explained to me why she didn't agree that it was an 14 issue, that it wasn't considered a substantive order -- can 15 you enlarge that a little bit, please? Yeah, thanks. -- 16 substantive order, and opened it to, on the exhibit, to the 17 writing part of the order, she took her finger and read 18 across the lines in front of me and said that she could write 19 that order, bracket, because it is not substantive. 20 Subparagraph B: Clerk Bisson further states, 21 quote, she pointed to that in my presence. Not only pointed 22 to it, but she took her finger and read the order as her 23 finger was moving across the text.	84

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1 Q. Having reviewed that paragraph, your Honor, what 2 was your question for General Counsel Dempsey?		1 got it for me.	
3 A. Well, as I read the statement of charges, there 4 was -- it was clear that Judge Introcaso had in her 5 possession an exhibit to Robin Partello's JCC complaint, and 6 that the exhibit to Robin Partello's JCC complaint would have 7 had the original writing. And I saw the word "exhibit" and 8 pointing to an exhibit, and what my concern was was that are 9 you guys sure that Clerk Bisson was pointing to the case file 10 with the unobscured writing or was she pointing to Robin 11 Partello's exhibit to the JCC complaint, because I wanted to 12 be absolutely sure now that I knew who the witness was that 13 they were absolutely -- that that testimony was clear, 14 because that's important testimony.		2 Q. When she read the proposed text of the letter to 3 you over the phone, do you recall making or suggesting any 4 changes to the letter?	
15 Q. What response did General Counsel Dempsey provide?		5 A. I think I just wanted to be clear that, you know, I 6 had brought up the -- brought up the de novo order, you know, 7 before, you know, that I'd sort of gone on record and brought 8 up the de novo order possibility, and she brought it up 9 again, and, you know, just wanted to be clear that our prior 10 conversation and our current conversation were consistent.	
16 A. I believe she said they met with Clerk Bisson twice 17 and they were -- they were sure that she was talking about an 18 exhibit that was prepared for the purposes of the examination 19 under oath, not the Robin Partello exhibit to the JCC 20 complaint.		11 Q. And, your Honor, I'm not -- I'm not going to 12 attempt to quote the letter you're referencing, but do you 13 recall that the letter had language in it indicating that you 14 could not say with 100 percent certainty that you did not 15 apply the White-Out correction tape to the March 12th orders?	
21 And then I said, okay, fine, and hung up, and then 22 she called me back and had a letter written. So she read me 23 the letter and I said, sounds good. Sorry, I think I said, I		16 A. Yes, that is what I said and that is language that 17 I approved.	
	86	18 Q. Did you have the opportunity to speak to anybody in 19 the criminal bureau at the Attorney General's Office?	
		20 A. No.	
		21 Q. Did you have the opportunity to speak to Attorney 22 Waystack thereafter?	
		23 A. I've never spoken with Attorney Waystack.	
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1 just want to be sure we, you know -- you know, summarize what 2 we talked about, and I approved it.		1 Q. And, your Honor, you've seen the judicial conduct 2 complaint this morning, because I showed it to you as an 3 exhibit -- as an exhibit to this deposition, and I also 4 referenced one of the exhibits to that JCC complaint 5 consisting of the Apple Pay order. Do you recall that?	
3 Q. The letter you're referencing, was that a letter 4 that was addressed to Attorney Philip Waystack in his 5 capacity as committee counsel for the JCC?		6 A. Yes, you showed me it appended to Robin Partello's 7 complaint to the JCC.	
6 A. Actually, let me back up. She read me the text of 7 a letter that she was writing and I said, be sure that if any 8 of the people -- if anyone wants to talk to me, I'm available 9 to talk to, and she gave me the name of somebody from the 10 criminal bureau and I think she gave me Attorney Waystack's 11 name as well, and said, these are the two people who might be 12 in touch.		8 Q. When you had this conversation with General Counsel 9 Dempsey on October 26th raising your question about the 10 exhibit, did she in any way tell you that Judge Introcaso in 11 this matter has told her that Judge Introcaso thinks Clerk 12 Bisson reviewed the Apple Pay order as an exhibit to the 13 judicial conduct complaint as opposed to within the original 14 case file?	
13 And then -- again, I think she said that and then 14 she called back in a few hours and read me the text of a 15 letter that she had written. I didn't see the letter until 16 after they indicated I would be deposed.		15 MR. WAYSTACK: Objection to the form.	
17 Q. So she read you the text over the phone and you had 18 an opportunity to review the letter in preparation for your 19 deposition?		16 A. I came up with that on my own after reading the 17 statement of formal charges, and Attorney Dempsey didn't say 18 anything about what Judge Introcaso said or didn't say about 19 what her position was, about what Judge Introcaso's position 20 was.	
20 A. She read me the text over the phone on October 21 26th. I didn't think about the case again until sometime in 22 December when they said they wanted to depose me, and at that 23 point I got a copy of it from, I believe Attorney Boffetti		21 Q. Appreciating your statements, your Honor, that you 22 came up with it in reviewing the statement of formal charges, 23 had you ever heard that idea at all before you read the	

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1 statement of formal charges?		1 Q. Do you know if it has been entered into the Odyssey	
2 A. No. I was just concerned -- not concerned. It's		2 Case Management System?	
3 just the testimony of Clerk Bisson is very important, and		3 A. I don't know.	
4 when I saw the word "exhibit" in paragraph 30, I had read in		4 Q. Last line of questioning, your Honor, and I'm just	
5 other parts of the statement of formal charges that there --		5 about done.	
6 somewhere else in the statement of formal charges that there		6 Reflecting on the time you were sitting in Nashua,	
7 was in Judge Introcaso's possession a copy of the JCC		7 in terms of the volume of cases, can you compare it to	
8 complaint with the exhibits and that the unobscured order was		8 Milford and Merrimack?	
9 an exhibit, and because Clerk Bisson's testimony was		9 A. I would say it's heavy everywhere for family law	
10 critical, I wanted to be sure that she saw what -- that she		10 cases. It's a very high volume. It got even higher when	
11 was looking at the original case file and not the exhibit to		11 Judge Introcaso took her sabbatical, because then I had to do	
12 the JCC complaint.		12 it almost all myself, but it was a big -- it was a very busy	
13 Q. I understand. Thank you, your Honor. How long did		13 family court. Very busy.	
14 you speak to General Counsel Dempsey on October 26th?		14 Q. And if you were sitting in Nashua on any given day,	
15 A. I'm going to say it was less than five minutes,		15 can you give me a ballpark sense of how many hearings you	
16 maybe ten. I don't know.		16 would sit on?	
17 Q. Did you take any notes of your conversation with		17 A. It depends. If it was a trial day or a motion or a	
18 her at that time?		18 list -- they call them list days, there might be seven or	
19 A. No.		19 eight hearings on a list day. If it's a trial day it might	
20 Q. Have you spoken to her regarding the Partello case		20 be a full day trial, or one day of a multi-day trial.	
21 or the JCC complaint after you spoke to her on October 26th?		21 And then if I did probate, there might be some	
22 A. Not speaking. I think she was involved in e-mails		22 guardianships. Or if I did a district day, I could sit on 40	
23 to set up the depositions.		23 or 50 cases if they're pleas and continuances and stuff.	
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1 Q. And I have --		1 Q. So a list day in Nashua on marital cases might	
2 A. I've never spoke --		2 include seven to eight hearings?	
3 Q. I don't want to know about those conversations,		3 A. Yeah. I mean, either half-hour hearings, you know,	
4 your Honor.		4 let's say three hours -- three one-hour hearings in the	
5 A. Okay.		5 morning, two in the afternoon, a DV in the morning, maybe	
6 Q. Your Honor, do you maintain a recusal list?		6 multiple DVs at 8:30 and then a list starting at 9. So yeah,	
7 A. The clerk does.		7 seven -- six, seven, eight, maybe four, depending on how long	
8 Q. Can you describe your recusal list for me?		8 they are.	
9 A. It's a list of attorneys, pretty much everybody		9 Q. You would be responsible for issuing orders on all	
10 from my former law firm and then maybe another six to ten		10 of those cases, some of which you may have ruled on in the	
11 friends, family, friends who are also attorneys.		11 courtroom and some of which you may not have?	
12 Q. When you referenced the clerk, who did you mean to		12 A. Correct, if it's a list day and I hear the case and	
13 reference?		13 there's enough time and it's a simple enough issue, I will	
14 A. When I first became a judge, I prepared the recusal		14 write an order, sort of like the one I did in the Partello	
15 list, and because I was sitting in Nashua and Merrimack, I		15 case. It was like a page and a half long, but I'll write an	
16 believe I e-mailed it to Clerk Bisson and Clerk Killkelley.		16 order on the bench and send them off with it. But if I don't	
17 Q. Do you know what Clerk Bisson has done with your		17 have time or it's too complicated, I take it under	
18 recusal list?		18 advisement.	
19 A. No.		19 Q. And recognizing that there may be times when a	
20 Q. Do you know which clerks have access to it?		20 marital master is in the courthouse and at times when a	
21 A. You mean which sub clerks within the office?		21 marital master is not in the courthouse, how many marital	
22 Q. I do.		22 master recommendations would you need to cosign in a	
23 A. I don't know.		23 courthouse staffed by a marital master?	

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1 A. Well, I don't have much to compare it to, but I 2 would say -- and where I sit now -- I mean, it changes every 3 year, because in Merrimack I signed for Judge Kinghorn and 4 Master Love, but she's retiring. In Nashua we have a child 5 support referee and Master DalPra. I could go and there 6 would be maybe ten -- there would be ten cases stacked up. 7 The child support stuff there might be 15 or 20 stacked up. 8 I think Master DalPra's volume was higher than 9 Master Love or Judge Kinghorn. Referee former Judge 10 Kinghorn. I can't give you a real number, but, you know, 11 probably -- again, I'm thinking Merrimack numbers in my head.		1 reviewed the objection to that. And I reviewed my de novo 2 order. In order to obtain those pleadings, I looked at the 3 docket report for the Partello case so that I could identify 4 them and get the copy sent to me, because I didn't have 5 access to the file. And I also looked at copies of the 6 actual whited-out orders, like high contrast copies of the 7 actual whited-out orders.	
12 Q. And when you were sitting in Nashua between January 13 of 2019 and April of 2019, who were the clerks you worked 14 with most frequently?		8 Q. Does that include everything you've read before 9 upon preparing for today's deposition?	
15 A. Aline Chasseur, Julie Lodes for family law. I'm 16 going to say Julie and Aline were the most -- the others 17 were -- Julie Lodes. The others kind of came and went out of 18 family.		10 A. For deposition preparation that is -- once I knew 11 the deposition was going to be happening, that is to the best 12 of my knowledge right now all of the documents that I looked 13 at to get ready for today.	
19 MR. DELANEY: Thank you very much, your Honor. If 20 I could just have one minute, Phil, before I conclude.		14 Q. Did you review the judicial conduct complaint of 15 Robin Partello?	
21 MR. WAYSTACK: Take your time.		16 A. I've never read that.	
22 MR. DELANEY: With the understanding that Judge 23 Derby will be available to testify at the time of the		17 Q. Did you review the formal statement of charges 18 again before today's deposition?	
	94	19 A. No.	
1 hearing, I have no further questions at this time. Your 2 Honor, thank you very much.		20 Q. Is there any other document other than what you've 21 discussed that you can recall reviewing prior to the 22 deposition today?	
3 THE WITNESS: Thank you.		23 A. For the time period between the notice that I would	
4 EXAMINATION			
5 BY MR. WAYSTACK:			
6 Q. Good morning, your Honor. First of all, I'm going 7 to go for a bit. I don't think I'll be quite as long as 8 Attorney Delaney. Are you okay to keep going forging through 9 here without a break?		96	
10 A. Yes. Maybe in another 15 or 20 I'd like a break, 11 but I'm good to get started.		1 be deposed and today, I cannot presently remember any other 2 documents that I looked at.	
12 Q. Whenever you would like. Okay. Just generally --		3 Q. Okay. With the exception of discussions with 4 Attorney Boffetti, can you tell me what, if any, 5 conversations you have had with other individuals in order to 6 prepare yourself for the deposition today?	
13 general questions for the beginning, Judge Derby. Can you 14 tell me what you've read to prepare for today's deposition?		7 A. Nobody I can think of.	
15 A. I reviewed the letter from -- and again, this is 16 back in December. I reviewed the letter from Attorney 17 Dempsey. I reviewed the motion --		8 Q. Okay.	
18 Q. That's the October -- excuse me. That's the 19 October 26, 2020, letter?		9 A. Nobody at all, no.	
20 A. Yes, the October 26th letter from Attorney Dempsey.		10 Q. Okay. You mentioned the case summary. I just want 11 to -- and Attorney Delaney had asked you earlier to take a 12 look at Introcaso 2. I think he used a little different 13 words, and I think we're on the same page but I want to be 14 sure. Introcaso 2 is the case summary of the Partello and 15 Campbell case.	
21 I reviewed the recusal order from Judge Introcaso.		16 A. I sometimes call them docket reports, but case 17 summary is what we call them in the courts, yes.	
22 Q. Yeah.		18 Q. So when I asked you the documents you have 19 reviewed, you were talking -- when you said the case report, 20 you were talking about the case summary, which is Introcaso 21 2?	
23 A. I reviewed the motion to terminate the guardian. I		22 A. Not necessarily. I used Odyssey to go online and 23 download a current case summary.	

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1 Q. But it is this same document in an electronic 2 version --		1 until December 9th, 2019, there was a block of period there 2 from January 11th, 2019, until the date of your so-called de 3 novo order on April 26th, '19, where you had no involvement 4 in the case or no orders written by you. Do you disagree 5 with that statement, Judge Derby?	
3 A. Yes.		6 A. I do not specifically -- yeah. I don't disagree.	
4 Q. -- perhaps updated?		7 Q. Okay. And to the best of your recollection, and 8 you're free to use your recent research of the Odyssey 9 system, what was the last formal date that you did something 10 on this case and what was that?	
5 A. Yes. Yes.		11 A. I don't remember. I don't have the -- I don't have 12 the printed-out Odyssey with me and -- I don't know. I mean, 13 I don't remember --	
6 Q. If you look -- turn to Introcaso Exhibit 2 for a 7 moment, it's a ten-page document. If you turn to the tenth 8 page, it shows -- seems to show that the last date is 9 November 1st, 2019, and that's in a category called target 10 date. Do you see that?		14 Q. Okay.	
11 A. Yes.		15 A. -- what it was.	
12 Q. If you flip to the previous page, page 9 of 10, the 13 last formal thing on the case summary appears to be 10/29/19, 14 other. Do you see that?		16 Q. From some of the testimony developed earlier with 17 Attorney Delaney, is it so -- it seems as though you were 18 clear on this. You issued no orders on the Partello case or 19 the Partello/Campbell case in the year 2020; is that 20 accurate?	
15 A. Yes.		21 A. To the best of my recollection, that is correct.	
16 Q. So by you going to Odyssey, you would have seen a 17 more complete version of case summary, which is Introcaso 2, 18 because it would be more updated than October of 2019; would 19 you agree with that?		22 Q. And part of that reason is you're no longer in 23 Nashua; is that right?	
20 A. Yes. Sorry.			
21 Q. Okay. And do you have a recollection of seeing 22 entries from October 29th to closer in time when you reviewed 23 Odyssey for the case summary?			
	98		100
1 A. I didn't really pay attention to the newer stuff. 2 I mean, I skimmed over and noticed that it was still ongoing 3 and that Judge Curran was sitting on it, but I was focused 4 more on printing out the page that had the orders I wanted to 5 look at so that I could circle them and make it easy to find.		1 A. Correct.	
6 Q. Sure.		2 Q. Was your involvement in the family court in Nashua, 3 was that part of your training program, Judge Derby, or was 4 it just the assignment that you had for that period in time?	
7 A. That's all I had available. I didn't have -- all I 8 had was Odyssey to do it, so I downloaded the whole thing, 9 yes.		5 A. 2019 was my formal assignment. I was sitting on 6 cases by myself and I had my own docket. And as far as 7 everyone was concerned, I was a full-time judge, but I 8 reached out for help. I sought out help when I needed it, 9 but to the extent I had a training program, it was November 10 and kind of December 2018.	
10 Q. Okay. In one of the discovery disclosures from the 11 New Hampshire Judicial Branch, there is a newer version of 12 the case summary that we're talking about. It doesn't have 13 many more entries, just a few, but I just -- in terms of the 14 next question, in looking at Introcaso 2 and a more recent 15 version of the case summary in discovery, it appears to me, 16 this is about your own involvement with this case, that 17 between December 21st, 2018, and December 9th, 2019, you 18 issued or your name is on about 17 orders or forms in this 19 case. Does that sound familiar to you?		11 Q. Okay. And that -- the term I've heard over the 12 years is when newer judges would take to the bench they would 13 do shadowing of experienced judges. Did you mention 14 shadowing at some point during your direct examination?	
20 A. It sounds about right.		15 A. Shadowing occurred in November and in December of 16 2018. I did no more shadowing in 2019, because I was sitting 17 full time.	
21 Q. But it also appears to me, again, when I look at 22 the case summary and the orders, that although your time 23 frame was almost a year, that is, from December 21st, 2018,		18 Q. So in November and December of '18, did you shadow 19 Judge Introcaso?	
		20 A. I believe I did once, yes.	
		21 Q. And what does that actually mean? You went into 22 the courtroom and sort of sat and watched as she proceeded 23 through the day's docket?	

101	103
<p>1 A. Yes, but I think -- I think the only thing I did 2 was a first appearance, so I sat either in the audience or in 3 the security chair or something and just watched her do a 4 first appearance.</p> <p>5 Q. Is that the only recollection you have of a shadow 6 experience with Judge Introcaso?</p> <p>7 A. It is. It's possible there were more, but I think 8 that was the only one I did with her.</p> <p>9 Q. Did you also shadow other judges in November and 10 December of 2018?</p> <p>11 A. Yes.</p> <p>12 Q. And who were those other judges?</p> <p>13 A. In November it would have been Judge Spath in 14 Concord, Judge Yazinski in Claremont. What else? Oh, Judge 15 Emery in Manchester.</p> <p>16 In December I was sitting in Derry doing district 17 without any shadowing and then in December of 2018, I know I 18 shadowed Judge Leary a fair amount. I may have shadowed -- I 19 sat in on a first appearance -- I don't -- (Zoom connection 20 interrupted.)</p> <p>21 Q. I'm having a little difficulty hearing you, Judge 22 Derby.</p> <p>23 A. Sorry. Yes, so November, Yazinski, Spath --</p>	<p>1 court has, in other words, I wanted -- if the court is 70/30 2 marital/district, I asked to have that be my mix. So right 3 now the two courts that I sit in, we don't have a probate 4 division because that's in Nashua, but it's about 30 percent 5 district days, 70 percent marital days.</p> <p>6 Q. Okay. And is that to your liking?</p> <p>7 A. Yeah. I mean, I would -- you know, marital days 8 generate a lot of writing, so I mean, I like the marital 9 work, but it does generate a lot of writing and it's hard to 10 keep up with that. So, you know, the more district days you 11 have, you get fewer writing projects out of a district day, 12 so those are almost kind of like a break.</p> <p>13 But our caseload is heavily weighted towards 14 marital, because that's where the needs and the cases are.</p> <p>15 Q. Right. When you're doing district, particularly 16 criminal, ruling from the bench guilty or not guilty saves a 17 lot of writing time, doesn't it?</p> <p>18 A. Yes.</p> <p>19 Q. Let me --</p> <p>20 A. We do get motions to suppress --</p> <p>21 Q. Oh, sure.</p> <p>22 A. -- and civil -- you know, I do get writing 23 assignments that way.</p>
102	104
<p>1 Q. Leary?</p> <p>2 A. Emery, and then Leary in Nashua. Introcaso. I 3 don't know whether I sat in on cases, but I know I did a 4 first appearance with her.</p> <p>5 Q. Sure.</p> <p>6 A. Maybe Judge Quigley. I don't really remember what 7 else.</p> <p>8 Q. In terms of what you're doing now, as I understand 9 your testimony, you're now working primarily in Milford and 10 Merrimack; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. And are you doing all three disciplines in the 13 circuit court: probate, district, and marital?</p> <p>14 A. I'm doing two, marital and district.</p> <p>15 Q. Okay. Do you do district court? Do you act as a 16 justice in the district court portion with the circuit court 17 on a regular basis?</p> <p>18 A. In Milford, yes. In Merrimack, when Judge Ryan is 19 away I do district in Merrimack, too.</p> <p>20 Q. Is there some designation, do you consider yourself 21 primarily a family court, a marital judge or a district judge 22 or neither?</p> <p>23 A. I -- in 2020 I asked for a mix of whatever the</p>	<p>1 Q. I understand. Attorney Delaney has covered a lot 2 of the areas that I'm focused on so I'll try not to be overly 3 redundant. I'd like to go -- you have a set of exhibits from 4 me, I believe, or Attorney Boffetti does.</p> <p>5 MR. WAYSTACK: Mike, were you able to get all 6 those?</p> <p>7 MR. BOFFETTI: I have them, Phil, thank you.</p> <p>8 Q. BY MR. WAYSTACK: Okay. And although Attorney 9 Delaney used some of these same exhibits, Judge, I just want 10 to go over the ones I've marked because that's the way I've 11 set it up.</p> <p>12 I'd like to go to Derby Exhibit 8, if you would 13 take that, please.</p> <p>14 (Derby Exhibit 8 was marked.)</p> <p>15 Q. If you could just take a second and take a look at 16 that.</p> <p>17 A. (Witness peruses document.) Yeah, got it.</p> <p>18 Q. So let me explain, and tell me if I don't explain 19 this correctly. Derby Exhibit 8 is two documents: The first 20 document is a Notice of Decision dated April 29, 2019, and 21 the notice, the text is Order on Motion to Remove GAL.</p> <p>22 The second page of Derby Exhibit 8 is the 23 handwritten April 26, 2019, order that was previously</p>

1 discussed by Attorney Delaney, correct? 2 A. Yes. 3 Q. Okay. So this order that we're talking about in 4 Exhibit 8, this was really an order on Ms. Partello's motion 5 to remove the guardian ad litem, am I correct? That was the 6 substance, the main substance of this order, am I correct? 7 A. Yes. That is what I -- that is the thing that 8 started the writing project, yes. 9 Q. Good. And if you look at the second page of 10 Exhibit 8 in the second paragraph, we know that because you 11 actually use the word "substantively." Substantively the 12 motion to dismiss, and it goes on. Am I correct? 13 A. Yes. 14 Q. Okay. And so let me turn now to the first 15 paragraph on the second page of Exhibit 8. In order -- as I 16 understand your testimony, Judge Derby, in order for you to 17 be able to make a decision on the motion to remove the 18 guardian, you had to sort of back pedal and review all of the 19 preceding motions that you specifically listed in paragraph 20 one of the -- your order in Exhibit 8, am I correct? 21 MR. DELANEY: Objection to form. You can answer 22 the question. 23 A. I don't know. I guess -- I guess when I first	105 107 1 me and, you know, all of the stuff that didn't have to do 2 with the recusal, you know, it was just friction between the 3 guardian and the mom, and I said I'm rejecting that too. I 4 think that's the purpose of the second paragraph. 5 Q. I want to go back to the words you just used in 6 your response. You said the "alleged conflict"; that is, the 7 conflict of interest with Judge Introcaso sitting on a case 8 on someone who is on her recusal list. Why did you use the 9 word "alleged" conflict? Don't you think that's a conflict, 10 Judge Derby? 11 A. Actually, I do. I'm sorry, I'm used to hedging my 12 words, and I think -- yes, it was a conflict. She admitted 13 it was a conflict. I agree. 14 Q. Okay. Let's go to Derby Exhibit 3, but keep Derby 15 Exhibit 8 nearby, if you would. 16 (Derby Exhibit 3 was marked.) 17 A. (Witness peruses document.) Okay. 18 Q. So Derby Exhibit 3 is the -- and correct me if 19 yours does not reflect that. It's the three-page handwritten 20 recusal order of Judge Introcaso dated March 15th, 2019; is 21 that correct? 22 A. Yes. 23 Q. Okay. If you would turn to the third page of Derby
106 1 looked at the motion to remove, I said if I don't remove -- I 2 don't know. I mean, I think the other stuff had to be 3 addressed as part of it, so I mean, I think I looked at it 4 afresh and said, I would have granted this, but I'm not -- I 5 would have -- I would have appointed the same guardian, but 6 now that I have, and now that I'm not going to change my 7 mind, I need to go back and look at everything else. 8 Q. Sure. 9 A. So before I -- I don't know -- 10 Q. I'm sorry. Go ahead. 11 A. So I don't quite know what I was thinking about by 12 prior to other than just saying that I had to look at it all 13 at some point. 14 Q. And in fairness, when you look at the motion to 15 remove file by Ms. Partello, it raised many of those very 16 issues you considered in the first paragraph of Exhibit 8, 17 didn't it? 18 A. Yeah. I mean, it raised -- it raised the -- it -- 19 the only new thing there I think was the conflict, the 20 conflict of interest -- the alleged conflict of interest. 21 Q. Sure. 22 A. And then I think the substantively, I think what I 23 meant there was all the other stuff about, you know, lying to	108 1 Exhibit 3, which is the recusal order. Under the part -- it 2 says "order" in caps and then there's a colon. Do you see 3 that? And there are three provisions in the order. Am I 4 right? 5 A. Yes. Yes. 6 Q. So in the first specific provision of the order, it 7 says that Judge Julianne Introcaso should have no further 8 involvement in this matter. Clear as a bell there, correct? 9 A. Yes. 10 Q. And in the process of making that order, she 11 essentially sua sponte, she, Judge Introcaso, sua sponte 12 recuses himself -- herself from any further involvement as a 13 judge in this case. Is that what you understood? 14 MR. DELANEY: Objection to form. You may answer 15 the question. 16 A. That is how I understood the order, yes. 17 Q. Okay. The second part of the order is that the 18 clerk, presumably Clerk Bisson, shall expeditiously work with 19 the parties to reassign this matter, resolve the pending 20 motions, and schedule this matter for any further hearing. 21 Did I read that correctly? 22 A. That's what it says, yes. 23 Q. Okay. In terms of a portion of paragraph two, the

109	<p>1 pending motions, the only pending motion at that time was the 2 motion to remove the GAL.</p> <p>3 MR. DELANEY: Objection to form.</p> <p>4 A. No, that's not -- okay. That's not correct.</p> <p>5 Q. Okay. Go ahead.</p> <p>6 A. There was a slew of contempt and back and forth 7 stuff that went back to January or February that had not been 8 ruled on.</p> <p>9 Q. Fair enough.</p> <p>10 A. Judge Introcaso recused herself, the date is I 11 guess March 19th. The motion to remove the GAL happened 12 after Judge Introcaso recused herself, and the recusal was in 13 the reasons to remove. So that wasn't pending when she wrote 14 this order.</p> <p>15 Q. Fair enough. I stand corrected. Let me go to the 16 third provision of the order, which is that no status 17 conference will occur on March 19th, 2019. Did I read that 18 correctly?</p> <p>19 A. Yes.</p> <p>20 Q. And are you aware -- you may not be. Shortly after 21 issuing the two March 12th, 2019, orders, that is, the Apple 22 Pay order and the exceed the cap order, that Judge Introcaso 23 scheduled a kind of quick status conference. Are you aware</p>	111
110	<p>1 of that?</p> <p>2 A. Only by reading the file.</p> <p>3 Q. Right. And so the third provision in this order 4 just -- it ends the status conference.</p> <p>5 A. That's what it says, yes.</p> <p>6 Q. Nowhere in this order of March 15th, 2019, Judge, 7 does Judge Introcaso vacate the two March 12th, 2019, orders, 8 that is, the Apple Pay pay order and the exceed the cap order 9 that she had previously ruled on, does she?</p> <p>10 A. Paragraphs one through three do not have a 11 substantive vacation or reconsideration of those two orders. 12 They do not appear there.</p> <p>13 Q. And you saw nothing else in the file which would 14 suggest that Judge Introcaso did vacate the two orders she 15 issued on March 12th, 2019, the Apple Pay and the exceed the 16 cap orders, am I correct?</p> <p>17 MR. DELANEY: Objection to form. You may answer 18 the question.</p> <p>19 A. No. I mean, you are correct, I didn't see anything 20 in her writing or her order that vacated those two orders.</p> <p>21 Q. And so your use of the words "de novo" in your 22 April 26th, 2019, order, they did not in any way change the 23 two orders that Judge Introcaso had entered on March 12th,</p>	112

113	<p>1 remember if Judge Introcaso mentioned it on January 9th when 2 I talked -- when she sent out the e-mail requesting a call. 3 I don't remember. And I don't think we talked about it when 4 I saw her in December after she came back from her sabbatical 5 break.</p> <p>6 Q. To be precise, you're talking about December of 7 2019 now, correct?</p> <p>8 A. Right, December of 2019.</p> <p>9 Q. So if I understand correctly -- go ahead.</p> <p>10 A. We did talk when she got back and I had to get a 11 gift over to Judge Gorman, so...</p> <p>12 Q. I remember that discussion from earlier. So to the 13 best of your recollection the first that you, Judge Derby, 14 learned about the fact that there was a JCC proceeding 15 concerning Judge Introcaso and the Partello and Campbell case 16 was in the calendar year 2020?</p> <p>17 A. Yes.</p> <p>18 Q. Back to the -- your April 26th, 2019, order for a 19 minute, Exhibit 8. Other than reviewing the prior orders in 20 connection with your decision on the motion to remove the 21 guardian, you had no formal basis to be doing a de novo 22 review of Judge Introcaso's two March 12th orders, did you?</p> <p>23 A. Well, I think I -- I mean, I -- I think that when I</p>	115
114	<p>1 chose -- when -- there was a recusal. The judge recused 2 herself. And I chose not to get rid of the guardian ad 3 litem, and I felt on my own that if I'm going to keep the 4 guardian ad litem, I needed to do a de novo review of all the 5 orders related to the guardian ad litem for the benefit of 6 the parties so that it was independently reviewed by an 7 independent judge.</p> <p>8 Q. You weren't sitting as an appellate court, were 9 you, Judge Derby?</p> <p>10 A. No.</p> <p>11 Q. You were reviewing the prior orders only inasmuch 12 as they affected the motion to remove the guardian, correct?</p> <p>13 MR. DELANEY: Objection to form. You may answer 14 the question.</p> <p>15 A. The -- yes, there was a recusal of a judge who had 16 issued some orders. I felt that now that I was being asked 17 to basically reconsider the big order, which is whether or 18 not to appoint this guardian, I felt that I had -- once I had 19 adopted, you know, and agreed that we were keeping the 20 guardian ad litem, I felt that I had to independently look at 21 the other orders and rule on them independently on their own 22 merit.</p> <p>23 MR. WAYSTACK: I've gone for more than 15 minutes.</p>	116

<p style="text-align: right;">117</p> <p>1 it looks like there is something that's been stricken out, 2 but I'm going to assume it was Master DalPra that did that 3 and not you. Do you have any recollection of that as you sit 4 here today?</p> <p>5 A. I have no recollection. But I do note that the box 6 is checked so they must have changed their mind or something.</p> <p>7 Q. Okay. And then in paragraph 11, whatever was first 8 written down, looks like it was scribbled out and then the 9 words "two days" added. Again, I'm going to assume that 10 that's Master DalPra and not Judge Derby.</p> <p>11 A. Yeah, because it says 15-minute pretrial and then 12 they changed it to final hearing, two days. So that makes 13 total sense.</p> <p>14 Q. Okay. Just below that where it's so ordered with 15 the preprinted full on -- Attorney Delaney went over that 16 with you a bit. And this is that anytime you're cosigning or 17 a judge is signing an order that a referee or a master did, 18 that language appears or supposed to appear; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And that at least on this form, Exhibit 27, that's 21 what's expected of the judge who signs an order to do in 22 order to sign you out, correct?</p> <p>23 A. Yeah.</p>	<p style="text-align: right;">119</p> <p>1 pages long I might skim stuff. If it's a child support 2 order, there's certain things I look for. And if they're 3 unusual, I dig deeper. If it's all kind of pretty standard, 4 I go through it quickly, but I do look at everything.</p> <p>5 Q. Let's turn to the next exhibit, which is Introcaso 6 28. That's the parenting plan, and that's a multiple-page 7 document.</p> <p>8 A. Yes.</p> <p>9 Q. It does not appear to me, Judge Derby, that there's 10 any White-Out that you applied to this order; am I correct 11 about that or am I wrong? Attorney Delaney raised something 12 on D, transportation, on page 8 or 9 that I can't see.</p> <p>13 A. I have it in front of me. I would not have applied 14 White-Out, because there's writing on top of it that isn't 15 mine, so whoever did that writing would have probably done 16 the White-Out.</p> <p>17 Q. So in the second-to-last page or third-to-last 18 page, you signed this order that was made by Master DalPra, 19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it looks like you signed it on January 11th, 22 and again, that same phrase there that you reviewed it, you 23 read it, you reviewed the factual findings and the correct</p>
<p style="text-align: right;">118</p> <p>1 Q. And do you ascribe to that yourself, Judge Derby? 2 In other words, do you read the orders to see if you agree 3 with the facts and do you look at the ruling to determine if 4 the correct law was applied?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Do you -- is it your experience, and I recognize 7 you're a relatively new judge. Is it your experience that 8 you cosign orders written by a master or a referee without 9 reading the order?</p> <p>10 A. No. I read the orders. Some orders are all 11 boilerplate, so I'll skim over the boilerplate and zero in -- 12 like a parenting plan I'll zero in on just maybe four or five 13 things I look at.</p> <p>14 Q. Sure.</p> <p>15 A. And then the rest is boilerplate and I just skim 16 over it really quickly.</p> <p>17 Q. I understand.</p> <p>18 A. But if it's a narrative order, I read those.</p> <p>19 Q. Okay. And so you would not sign an order without 20 reading at least what you consider the relevant portions on a 21 parenting plan or the narrative in a written note; fair 22 statement?</p> <p>23 A. Yeah, the narrative, you know, if it's many, many</p>	<p style="text-align: right;">120</p> <p>1 legal standard was applied, and then you signed it and used 2 your Mark Derby stamp; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Fair to say that in Exhibit 28 there is no 5 White-Out that Judge Mark Derby applied to this order?</p> <p>6 A. No, and what I will tell you is if I'm ever going 7 to change a master's order, I usually talk to the master 8 before I would do it. I wouldn't -- I wouldn't make a 9 change -- a master's recommendation. I would -- so if 10 there's anything on here, I would -- I don't -- I don't think 11 I've ever changed a master's recommendation without talking 12 to the master before doing it. So I would not have whited 13 something out without talking to the master.</p> <p>14 Q. So if I understand your response, if you're 15 reviewing an order of a master or a referee, you would not 16 apply White-Out to their order without discussing it with 17 them first?</p> <p>18 A. That is correct.</p> <p>19 Q. With regard to the orders you make yourself 20 independently, you don't need to speak to anyone, correct?</p> <p>21 A. No, because those are changing my mind as I go 22 along.</p> <p>23 Q. Sure. And routinely, I have an understanding</p>

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<p>1 having practiced law for quite a number of years how many 2 individual decisions as a family judge or a family law judge 3 you make on a day to day, and there's got to be hundreds in 4 some days, maybe thousands per week, and if you have a date 5 wrong or something, the use of White-Out for a draft of an 6 order, that is, before an order is sent out to the parties, 7 there's nothing wrong with that, is there?</p> <p>8 A. I don't think so.</p> <p>9 Q. How about once an order has been sent out to the 10 parties, what about your -- what's your position on whether 11 you have the right to white out an order after it's been sent 12 out to the parties?</p> <p>13 MR. DELANEY: Objection to form. You may answer 14 the question.</p> <p>15 A. I don't know. It depends. I would expect that -- 16 I don't know. I mean, I would expect that if -- if something 17 had already gone out and you were changing it, I think as a 18 judge, if I'm re-ruling on something or if I have to rule on 19 something, I think I'd have the right to change it, but there 20 would have to be something that explains what I did. Like if 21 you modify another judge's order, you cross it out with a pen 22 and then write something next to it, so I --</p> <p>23 Q. You'd agree with me that even in that</p>	<p>1 pickup is at seven and they really wanted to do the pickup at 2 three, so the order is amended accordingly. And then they 3 issue a new order.</p> <p>4 Q. Sure. Let's turn to Exhibit Introcaso 32, and 5 that's your order on a bunch of pending motions dated May 6 10th, 2019. Do you have that?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. And that's another one of those yellow-page 9 orders?</p> <p>10 A. Yes.</p> <p>11 Q. I don't see that you used any White-Out on that 12 order, Judge Derby; am I correct?</p> <p>13 A. I typed it on a computer, so I would have used 14 backspace or delete.</p> <p>15 Q. You didn't use White-Out.</p> <p>16 A. No, I didn't, because I typed it on a computer.</p> <p>17 There would be no -- like if I started typing and I got 18 something wrong, I would just backspace and delete it and 19 type it over.</p> <p>20 Q. How about order -- Exhibit 34, Introcaso 34. This 21 is another yellow-page order that you typed out, correct?</p> <p>22 A. Yes.</p> <p>23 Q. This is the order on further continuance dated May</p>
122	124
<p>1 circumstance --</p> <p>2 MR. DELANEY: I just don't think -- I don't think 3 he completed his answer to that.</p> <p>4 Q. I'm sorry. I'm sorry, Judge Derby. I interrupted 5 you.</p> <p>6 A. I pretty much did. I don't know -- as I sit here 7 today, I don't know who would have the right to change an 8 order that had already gone out, but my practice is when I do 9 something with another judge's order, and I think it's pretty 10 standard, you cross it out with a pen so you can still see 11 it, then you write your stuff next to it so everybody knows 12 you did it.</p> <p>13 Q. And regarding an order that you had made yourself 14 that had already gone out to the parties, if you were going 15 to alter the order after it had gone out to the parties with 16 White-Out based on your response, my understanding is you 17 would not do that without notification to the parties; did I 18 say that correctly?</p> <p>19 A. Right. Yes. If I had already issued an order and 20 I needed to change it, I would probably grab one of those 21 one-page things that I -- I'd grab one of these things and 22 then say, you know, my October 15th order was incorrect 23 because I didn't -- I misheard the parties when they said the</p>	<p>1 20th, 2019. No White-Out on that order --</p> <p>2 A. Yeah.</p> <p>3 Q. -- and I understand it was typed?</p> <p>4 A. Correct.</p> <p>5 Q. Let's go to Exhibit 38, Introcaso 38.</p> <p>6 A. Got it.</p> <p>7 Q. That's an order on yellow paper dated May 31st, 8 2019. Do you have it?</p> <p>9 A. Yes.</p> <p>10 Q. Am I correct that there is no White-Out used in 11 Introcaso 38?</p> <p>12 A. Correct.</p> <p>13 Q. Let's turn to Introcaso Exhibit 40. That's 14 another -- we'll call it a narrative order that you did. The 15 date of this order is June 17th, 2019. Fair statement to say 16 that there's no White-Out applied to Introcaso 40, Judge 17 Derby?</p> <p>18 A. Correct. Correct.</p> <p>19 Q. How frequently do you think, in percentage-wise if 20 we could do it that way, that you would use White-Out when 21 you were drafting an order?</p> <p>22 A. If I am drafting an order on computer, I would 23 never use White-Out because I have the backspace key. If I'm</p>

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1 writing on the bench after a hearing trying to come up with
 2 something that I can give the parties and there's back and
 3 forth and arguments and stuff, there might be a fair amount
 4 of White-Out on that order like the one that I wrote in court
 5 in this case.

6 If I'm doing margin orders, yeah, I use White-Out
 7 every now and then. Like if I start writing and my hand just
 8 makes the character wrong so it looks bad, I white that out
 9 and write the word again.

10 Q. And I'm going to use your words --

11 A. And then I -- go ahead.

12 Q. Sorry, go ahead.

13 A. If, for example, as I said before, if I write, you
 14 know, you have 14 days to pay and then I write another line
 15 and I think I'd better make it 30, I'll white out the 14 and
 16 write 30 and send it off.

17 Q. Sure. To use your own words in responding to the
 18 question, you use White-Out every now and then, fair
 19 statement?

20 A. I would say every day.

21 Q. You said earlier every now and then. Are you
 22 changing your --

23 A. Yeah.

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1 Q. Are you changing that answer?

2 A. Yeah, now and then. I mean, now and then sounds
 3 like occasionally. I would say I use it frequently. I would
 4 say I probably use it three to four times a day on
 5 handwritten things that I do where I need to. Now and then,
 6 that probably suggests a little too infrequently.

7 Q. Do you -- as you sit there today, do you ever have
 8 a recollection of using White-Out tape on a court order after
 9 it was issued and sent to the parties?

10 A. No.

11 MR. DELANEY: Objection to the form. You may
 12 answer the question.

13 A. No.

14 Q. You talked to Attorney Mary Ann Dempsey, who
 15 represents the New Hampshire Judicial Branch, on several
 16 occasions; is that right?

17 A. Two occasions, three phone calls.

18 Q. Okay. The first occasion was in January of 2020?

19 A. I think it might be early February, but --

20 Q. Okay.

21 A. -- there was one phone call in that area.

22 Q. Okay. And I am looking at Attorney Dempsey's

23 October 26th, 2020 letter to me, and she said in that first

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1 occasion when she spoke with you, and we'll say it's February
 2 2020, you told her that you are almost positive that you did
 3 not use White-Out to Judge Introcaso's two March 12th, '19
 4 orders. Do you agree with that statement?

5 A. Yes.

6 Q. And then more recently in October of 2020, after
 7 you read the statement of formal charges, you called her back
 8 and said, looks like her words, that you would reiterate that
 9 you could not say with 100 percent certainty that you did not
 10 white it out. That's a little change in your testimony,
 11 isn't it, a little change in what you told her?

12 A. I think those two statements are consistent.

13 Q. So without a hundred percent certainty, almost
 14 positive, those are consistent with you. You're almost
 15 positive you did not white out the two March 12th, '19 orders
 16 made by Judge Introcaso?

17 A. I am almost positive, but I just -- I doubt myself.
 18 When I think about all the other explanations for how that
 19 could have happened, I doubt myself, and, you know, I just --
 20 I can't completely exclude that possibility. Whether I said
 21 almost positive or 98 percent, I think that's saying the same
 22 thing. If I chose different words in October that I chose in
 23 February, so be it.

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1 Q. Okay. Your level of belief that you might not have
 2 done it, it's not more probable than not that you whited it
 3 out, is it?

4 MR. DELANEY: Objection to form. You may answer
 5 the question.

6 A. In my view it's beyond a reasonable doubt, but, you
 7 know, as I said, I just -- I just doubt -- I doubted myself,
 8 because, you know, I just doubted myself and I didn't -- I
 9 can't say with a hundred percent certainty that I didn't do
 10 it as part of that order.

11 Q. I want to understand what you just said. It's not
 12 beyond a reasonable doubt that you did not -- that you did
 13 white out the order; am I correct?

14 MR. DELANEY: Objection to form. You may answer
 15 the question.

16 A. This answer started with the preponderance of the
 17 evidence standard.

18 Q. Sure. Yes.

19 A. And I am well, well, well beyond preponderance of
 20 the evidence that I did not white out --

21 Q. Okay.

22 A. -- the --

23 Q. Fair enough. Go ahead.

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1 A. No, we are beyond a reasonable doubt that I did
 2 not, and beyond a reasonable doubt is usually like 98, 99
 3 percent moral certainty, but I cannot -- I just have this
 4 little lingering bit of self-doubt given that it makes no
 5 sense, it made no sense to me that anybody else would have
 6 done that. So that's my answer.

7 Q. Did you ever see the original whited-out orders of
 8 March 12th, 2019, on the Apple Pay motion and the exceed the
 9 cap motion?

10 A. No.

11 Q. In responding to Attorney Delaney's questions
 12 earlier, you mentioned that you saw, it sounds like a copy
 13 from the rear of one of those motions that shows the whiting
 14 out; is that what you said?

15 A. Yes, and I'll tell you how I came to look at those.

16 Q. Sure.

17 A. One of my concerns is that, again, this is that one
 18 or two percent, what if my plan was to write my own order on
 19 top of Judge Introcaso's? What if I whited out Judge
 20 Introcaso's order, I wrote my order on top, and then I whited
 21 that out in favor of the written narrative order.

22 If that was the case, there would be two swipes of
 23 White-Out on that original order. I had never seen the

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1 and went over to the piece of paper. That seemed likely.
 2 And I wanted to eliminate that possibility to make sure that
 3 my writing wasn't sandwiched in between two passes of
 4 White-Out. That's when I looked at a high-contrast photo of
 5 the original.

6 Q. And you have resolved after looking at that copy
 7 that you didn't -- there was not a second pass of White-Out
 8 and you did not white out the documents?

9 A. That's what the -- that's what the pass shows.
 10 That's what the photos show, because my theory was that there
 11 would be my writing somewhere in between and that I whited
 12 her out, then I whited myself out, but that does not appear
 13 to have happened based on the photos I looked at.

14 Q. When you reviewed the formal statement of charges,
 15 I think you said you printed it out. You've read the entire
 16 document, haven't you?

17 A. Yes.

18 Q. And there was a reference, actually several
 19 references to criminal charges involving alteration or
 20 falsifying of records. Did you look those sections of law up
 21 after reading the formal statement of charges?

22 A. Yes.

23 MR. WAYSTACK: Okay. Jim, would you hand Judge

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1 whited-out order, so what I -- I asked is, you know, getting
 2 ready for today if there was any way they could like x-ray it
 3 or put it up to a light so that I could see if there was one
 4 swipe of White-Out or if there were multiple swipes of
 5 White-Out, which is the one kind of scenario that in my head
 6 maybe like I goofed up and I should have crossed it out with
 7 a pen, but I whited it out and I wrote my own thing on top,
 8 and then I changed my mind and whited out my thing.

9 But I looked -- but they have gotten for me like a
 10 high-contrast picture showing there's only one swipe of
 11 White-Out over those words.

12 So that is the time I looked at the whited-out
 13 thing. And I've never seen the original. I've just seen a
 14 high-contrast lighted copy showing what I think is only one
 15 swipe of White-Out.

16 Q. And as a result of seeing that high-contrast copy
 17 that disclosed only one swipe of White-Out, what, if
 18 anything, did that mean to you in terms of the possibility,
 19 although remote, that you whited out the 3/12/19 orders?

20 A. Reduced it, because the most likely of those
 21 difficult unusual self-doubt possibilities was that, you
 22 know, I whited her thing out because I was going to write on
 23 top of it. I wrote on top of it. Then I whited myself out

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1 Derby Derby Exhibit 4, please.

2 (Exhibit 4 was marked.)

3 A. I've got it right here.

4 Q. Okay.

5 A. (Witness peruses document.)

6 Q. So that's a printout of section -- of RSA 541-6,
 7 falsifying physical evidence, and as you can see in the text,
 8 that's in a case where an investigation is pending; do you
 9 see that?

10 A. Yes.

11 Q. And even with the very slim possibility you may
 12 have whited out a part of the March 12th orders of Judge
 13 Introcaso, based on your testimony so far, you weren't aware
 14 in April of 2019 that there was a pending judicial conduct
 15 complaint, were you?

16 A. No.

17 Q. Okay.

18 MR. WAYSTACK: Would you hand him Exhibit 5,
 19 please.

20 (Exhibit 5 was marked.)

21 A. I got it right here. (Witness peruses document.)
 22 Q. So Exhibit 5 is the misdemeanor RSA 641-7 in
 23 connection with altering a record of government information.

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<p>1 The distinction of course is that there's no investigation 2 pending at the time. Your testimony this morning is -- 3 MR. DELANEY: Objection -- finish your question. 4 Finish your question.</p> <p>5 Q. Your testimony this morning is you did not alter 6 that record without letting anyone know?</p> <p>7 MR. DELANEY: Objection to form. Misstates the 8 law. You may answer the question.</p> <p>9 A. Can you break that into smaller pieces?</p> <p>10 Q. Sure. Let me withdraw the question. That was a 11 poor question.</p> <p>12 If a person under this statute that's shown in 13 Exhibit 5 knowingly makes a false alteration or a false entry 14 in a government record, that subjects them potentially to the 15 misdemeanor of tampering with public records. Would you 16 agree with that general statement?</p> <p>17 MR. DELANEY: Objection to form and to any 18 conclusions by this particular judge on the interpretation of 19 the law. You may answer the question.</p> <p>20 A. I -- the law says what it says. I think the 21 statute speaks for itself.</p> <p>22 Q. Okay. Earlier, Judge Derby, when Attorney Delaney 23 was asking you questions specifically about the Apple Pay</p>	<p>1 Q. My recollection is when Attorney Delaney was asking 2 you about this, if you turn now to the third page of Exhibit 3 6, you were not certain whether or not you read the margin 4 note; am I wrong about that?</p> <p>5 A. I'm not certain. I can't tell you today which 6 place I found the text of what Judge Introcaso said.</p> <p>7 Q. To follow up on that, but you have no independent 8 recollection today that you ever saw the margin order on page 9 3 of Exhibit 6 that I just asked you about?</p> <p>10 A. No.</p> <p>11 Q. I assume in preparation for this case you have seen 12 that and we've talked about it today?</p> <p>13 A. Yes, I mean, in preparation for the case I have now 14 seen it, but I just can't remember what -- as I said, I know 15 I looked at the motion. I read the whole motion over again, 16 and the motion had that thing on it, but I don't remember 17 where I saw the order.</p> <p>18 Q. You're not saying that the margin orders were not 19 in Exhibit 6, which is the Apple Pay, you're just saying you 20 didn't see it, you don't remember seeing it?</p> <p>21 A. I don't remember what I saw. I could have seen it. 22 I could have not seen it. I could have -- I could have read 23 Introcaso's written order, I could have read from the Notice</p>
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<p>1 order, you repeated something several times and that was that 2 the word "only" was in capitals. Do you remember that?</p> <p>3 A. Yes.</p> <p>4 Q. And if you'd turn to Derby Exhibit 6 for a moment. 5 (Derby Exhibit 6 was marked.)</p> <p>6 A. Got it. (Witness peruses document.)</p> <p>7 Q. So Derby Exhibit 6 is a multi-page document and it 8 begins with a Notice of Decision on page 1. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And as we have learned in this case, certain clerks 11 use text right from the order in the Notice of Decision and 12 in here it's, quotes, legal fees/GAL fees to be paid in cash, 13 by money order or bank check, only, end of quotes, and the 14 word "only" is capitalized; am I right?</p> <p>15 A. Yes.</p> <p>16 Q. So if you had reviewed this file prior to issuing 17 your April 26th, '19 order that we discussed earlier, the 18 likelihood is you would have come across this Notice of 19 Decision; is that a fair statement?</p> <p>20 A. Yes.</p> <p>21 Q. And in this Notice of Decision we're talking about 22 now, Derby 6, the word "only" in caps appears?</p> <p>23 A. It does, yes.</p>	<p>1 of Decision, and I could have also, I believe, read that off 2 the case summary/docket sheet that was in the file.</p> <p>3 Q. In one of the conversations that you've discussed 4 in response to Attorney Delaney's question about your 5 conversations with Judge Introcaso, did I understand 6 correctly that Judge Introcaso asked you if you knew about 7 the orders having been whited out and your testimony was no, 8 you do not? Do you recall that testimony?</p> <p>9 A. I believe I -- yes. On January 9th we had a phone 10 call and I answered her questions in the negative.</p> <p>11 Q. Okay. So that was in response to that e-mail that 12 Judge Introcaso sent to some fellow judges and some of the 13 clerk staff, correct?</p> <p>14 A. Yes.</p> <p>15 Q. When she -- when Judge Introcaso asked you if you 16 knew about the White-Out orders, did that -- did that raise 17 your curiosity about that question, Judge Derby?</p> <p>18 A. Not really. I mean, I was busy. I wanted to get 19 back to her and give her an answer. I don't know. I don't 20 know how long we talked or what we exactly talked about.</p> <p>21 Q. So if -- well, let me ask you, did you specifically 22 yourself do anything to investigate further after your 23 telephone discussion with Judge Introcaso on January 9th,</p>

1 2020, about the so-called whited-out orders? 2 A. I did nothing to investigate until Attorney 3 Dempsey -- I didn't investigate anything. I didn't think 4 about it. I don't know that I thought about it, but I took 5 no steps between January 9th and Attorney Dempsey's phone 6 call. 7 Q. Judge Introcaso was on leave in 2019 from, I'm 8 going to say early October to late December. You have a 9 general recollection of that, do you? 10 A. I do. 11 Q. Okay. And I think what you said earlier was that 12 in December of 2018 [sic] when she got back, you had a brief 13 discussion with her at that point? 14 A. I think when she came back, and I knew she was 15 back, I went in and said hello and welcomed her back. 16 Q. Okay. And to your recollection nothing was said 17 about the judicial conduct investigation at that point in 18 that conversation? 19 A. I do not remember talking about Robin Partello's 20 judicial conduct complaint, and I don't know whether I knew 21 about it. 22 Q. So it appears -- well, you may or may not know 23 this. So in the week of January 6th to January 10th, 2020,	137 1 got or e-mail from Attorney Dempsey? 2 A. I believe it was a litigation hold e-mail and it 3 mentioned Attorney Delaney and it mentioned the Judicial 4 Conduct Committee. I could call it up and see whether it 5 mentions Partello or not, but that's clearly -- I clearly 6 knew about the JCC -- I clearly knew there was a JCC 7 complaint at that time. 8 Q. Okay. And you've discussed a little bit earlier 9 that prior to taking the bench you worked in private 10 practice, you worked with the Cleveland Waters law firm. You 11 understand what litigation hold means in terms of preserving 12 information? 13 A. Yes. 14 Q. And can I assume that once you got that 15 communication from Attorney Dempsey that you did preserve 16 whatever information Attorney Dempsey asked you to preserve? 17 A. Yes, I preserved -- I did some searches of my 18 e-mails using search terms that I created, and then I put 19 them all in a folder, and then I just took screenshots of the 20 lines, you know, where it says date and subject matter. I 21 took screenshots of the e-mails I had preserved and I sent 22 those screenshots to Attorney Dempsey. 23 Q. I just have a few more areas and hopefully I'll	139 140
138 1 there's been some discussion about that, and part of what 2 Judge Introcaso was doing was responding, filing an answer to 3 the judicial conduct complaint of Robin Partello. When did 4 you first learn that? 5 A. When did I first learn that in that period of 6 January Judge Introcaso was responding to a JCC complaint? 7 Q. Sure. 8 A. I'm going to say when I read it in the -- when I 9 read it in the statement of charges that I got off the Union 10 Leader website in October of 2020. And again, that is 11 distinct from -- let me clarify that. 12 I don't know whether Judge Introcaso mentioned the 13 JCC complaint on January 9th, but that she was working on her 14 response in that week. I don't remember learning about that 15 particular task until I read it spelled out in the statement 16 of formal charges. 17 Q. Okay. So let me ask you a more general question. 18 To the best of your recollection, when is the first time you 19 learned anything about a judicial conduct complaint against 20 Judge Introcaso? 21 A. I'm going to say March of 2020 when I was asked to 22 preserve e-mails. 23 Q. That's the litigation hold letter that you probably	140 1 wrap this up quick. So I want to talk a little about you and 2 your recusal list. 3 So how many people are on your recusal list, Judge 4 Derby? 5 A. I'm going to say if you count my former firm and -- 6 I'm going to say 35, 30-ish, maybe in the 20s. 7 Q. Sounds like you're a popular person. 8 A. Depending on the size of my firm, but... 9 Q. Sure. Some judges from larger firms, I remember 10 this from Shane Devine many years ago, have what they call a 11 timed recusal, meaning I will not appear -- I will not allow 12 any members of my former firm to appear in front of me for a 13 period of five years from when I was appointed. Do you have 14 a time recusal policy with former members of your firm? 15 A. At present it is blanket. I am considering seeing 16 what things -- I was thinking maybe I'd do it in two, maybe 17 I'd do it in five, but in reality firms in Concord I'm in -- 18 they very rarely come to my two courts so -- the two courts I 19 sit at, so it -- I haven't really -- it's not really slowing 20 anything down having a broad recusal. 21 Q. Sure. 22 A. But I was going to just kind of keep it in place 23 and then revisit maybe in two years, five years, I don't	

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<p>1 know.</p> <p>2 Q. Fair enough. Parenthetically, I haven't known the 3 Cleveland, Waters & Bass firm to do a lot of family law over 4 the years, but we're in a changing world.</p> <p>5 A. We did do some, yeah.</p> <p>6 Q. Did you?</p> <p>7 A. Yeah, I did some.</p> <p>8 Q. I didn't know that. So I think you testified 9 earlier that you gave -- there's actually a printed list and 10 you gave it to Clerk Bisson; is that right?</p> <p>11 A. To my knowledge it was an e-mail that I sent with 12 the -- with -- I sent an e-mail to Clerk Bisson and Clerk 13 Killkelley.</p> <p>14 Q. Okay. Having sent those lists to the clerks, is it 15 your sense that it's up to the clerk to tell you when 16 somebody is to appear in front of you who is on your recusal 17 list? Is that the clerk's responsibility, is that your 18 responsibility, or is it a shared responsibility?</p> <p>19 A. I think it's ultimately my responsibility. I would 20 rely on the clerks, but, you know, if I look at a docket 21 sheet of my upcoming cases and I see somebody who's 22 problematic who is on the list, I make sure I tell the clerk 23 to reschedule or that I can't hear it.</p>	<p>1 seen the original version of the March 12th, '19 Apple Pay 2 and exceed the cap orders with the original White-Out 3 applied?</p> <p>4 A. I have not been in the physical presence of those 5 documents, no.</p> <p>6 Q. And the reference to the order that I showed you in 7 the Partello complaint, the legal fees, whatnot, that's in 8 handwriting, your reference to that, and I've heard this from 9 other judges, that is called a margin order, that is, 10 handwriting on the margin or empty space in one of the 11 motions of a file?</p> <p>12 A. That's what I call it and most judges do.</p> <p>13 MR. WAYSTACK: I have no further questions for you,</p> <p>14 Judge Derby.</p> <p>15 THE WITNESS: Okay.</p> <p>16 FURTHER EXAMINATION</p> <p>17 BY MR. DELANEY:</p> <p>18 Q. Judge, I just have a few follow-ups to Attorney 19 Waystack's questions.</p> <p>20 A. Sure.</p> <p>21 Q. First, just your last answer of not being in the 22 physical presence of those documents and appreciating we're 23 all not in the physical presence of one another a lot during</p>
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<p>1 Q. Sure.</p> <p>2 A. And that's the recusal list. I mean, there are 3 other -- there are other times when somebody's not really on 4 the recusal list but there's a connection that you disclose 5 to the parties before the hearing and then that might open a 6 discussion about recusal.</p> <p>7 Q. Sure. You find out that one of the parties in 8 front of you is your next-door neighbor and it's a, let's say 9 a litigious divorce, you're going to do something about that 10 one. Is that the type of situation you're talking about?</p> <p>11 A. Absolutely, because I might not know the last name 12 of -- my recusal list is really only about attorneys.</p> <p>13 Q. Right.</p> <p>14 A. If a former client or someone I'm socially friendly 15 with or whatever shows up in court, I spot it and I either 16 flat out recuse or if it's kind of a -- you know, if it's 17 kind of a question -- not a question but if it's a close 18 call, I will disclose it at the beginning of the hearing, 19 tell everybody what the issue is, and then if they all say 20 that's fine, that's fine. If they have an issue, we work it 21 out.</p> <p>22 Q. Give me just a moment. So I just want to be clear 23 on this, I think we're clear on. To this day you have not</p>	<p>1 a pandemic. Other than the high-resolution camera shot that 2 I understand has been prepared for you, have those original 3 documents been shown to you in any other electronic form or 4 audio/visual medium?</p> <p>5 A. No. I saw them for the first time today printed 6 out on colored paper.</p> <p>7 Q. So no shots over the Zoom, you've just had a camera 8 shot taken for you?</p> <p>9 A. I was shown colored pictures that Attorney Boffetti 10 brought in with me today. I have had them described to me, 11 but I did not see them for the first time until this morning.</p> <p>12 Q. And I don't want to get into any conversations with 13 your counsel of record for this deposition. Who described 14 the original whited-out orders to you?</p> <p>15 A. I'm going to assert attorney/client privilege.</p> <p>16 Q. Fair enough.</p> <p>17 A. I mean, I can --</p> <p>18 Q. That's all I -- it wasn't --</p> <p>19 A. The only time those orders have been described to 20 me would be in the confines of an attorney/client privilege 21 relationship and those would be attorney/client 22 communication.</p> <p>23 Q. And I'm going to add this broadly, hoping I don't</p>

<p>145</p> <p>1 need to tread any further. Can we eliminate from that 2 conversations you may have had with General Counsel Dempsey 3 when she was investigating this matter?</p> <p>4 A. Yes, I did not -- I did not have communications 5 with Attorney Dempsey about the one or two pass of White-Out 6 distinction and wanting to check that.</p> <p>7 Q. Thank you. I just want to reference the first date 8 of your first conversation with Mary Ann Dempsey because 9 Attorney Waystack asked a question at the beginning 10 referencing January and February of 2020. I had understood 11 you to testify earlier that you received an e-mail from 12 General Counsel Dempsey on February 7th and spoke to her 13 thereafter for the first time. Is that accurate?</p> <p>14 A. I base that answer on a -- I don't know whether it 15 was late January -- I have no independent recollection of 16 whether it was late January or early February, but I looked 17 at my e-mail inbox and the first communication I had from her 18 is a request for a telephone call in an e-mail that was sent 19 on February 7th.</p> <p>20 Q. Do you believe that your conversation with her took 21 place after you received that e-mail?</p> <p>22 A. Yes.</p> <p>23 Q. Your Honor, when you were answering questions about</p>	<p>147</p> <p>1 have a hearing, or I might still grant the motion or I might 2 deny it.</p> <p>3 But I'm just giving that as an example of an 4 instance where I will wipe out a whole sentence or two, 5 because I've written it, it hasn't gone out, but the only 6 reason I wrote it is because the clerk didn't give me the 7 objection or it didn't make it over into -- it got into my 8 signing before they got the objection in or they missed it or 9 something, and so yeah, I will white out a sentence or two.</p> <p>10 Q. And in that instance, you believe it is appropriate 11 to use White-Out to cover your first issuance of a marginal 12 order to then reconsider that order before it goes out?</p> <p>13 MR. WAYSTACK: Objection to the form.</p> <p>14 A. Yes. Yes, because it would be really confusing if 15 I issued an order saying no objection and the attorney says, 16 yes, I filed a timely objection, and it was just a paper 17 handling issue in the clerk's office that caused the 18 objection not to get in with the -- that caused the -- an 19 apparently unopposed motion to get into my signing pile when 20 there was still an objection floating around somewhere.</p> <p>21 So I think it would cause unnecessary work and 22 confusion to issue an order and then issue another order. So 23 that -- that's the use of a lot of white -- not a lot, but</p>
<p>146</p> <p>1 your personal use of White-Out, you used one example of using 2 White-Out while writing and then before it goes out receiving 3 an objection and whiting out the sentence. Do you recall 4 that?</p> <p>5 A. Yes.</p> <p>6 Q. Were you referencing some scenario where you may 7 have been considering ruling in one way based on your review 8 of the motion and then reconsidered your decision to rule in 9 a particular way based on additional information you received 10 such as from an objection?</p> <p>11 A. Well, that is the nuance, because sometimes the 12 ten-day thing will come, there will be nothing, there will be 13 no objection, they will put it in signing, I will read it, 14 and I will say, okay, I'll put a note, no objection. And 15 then I'll read the motion. I'll write, no timely written 16 response having been filed and it appearing appropriate, 17 motion granted. And then I'll put it in the pile and then a 18 clerk will say, oh, this came in the mail today. I forgot to 19 put it in with signing and it's the objection. And it was a 20 timely objection.</p> <p>21 So I grab that back, I read the objection, and then 22 I might say -- I might white out the thing I wrote and say, 23 schedule a hearing, or I heard the other side and we need to</p>	<p>148</p> <p>1 it's a sentence or two that you would white out and write 2 over.</p> <p>3 Q. This is my last area of inquiry, your Honor, and I 4 don't want to take you through, you know, lots of 5 possibilities of what may have happened here, but I 6 understand you requested a photograph of the whited-out 7 orders to help inform your review of a possibility that there 8 could have been two layers of White-Out on the order; is that 9 correct?</p> <p>10 MR. WAYSTACK: Objection to form.</p> <p>11 A. Yes.</p> <p>12 Q. It certainly doesn't eliminate other possibilities, 13 for example, that you whited out the two orders intending to 14 reconsider them, continued to review the case file, and then 15 decided to print an order on another piece of paper, right? 16 That possibility isn't entirely eliminated?</p> <p>17 MR. WAYSTACK: Objection to form.</p> <p>18 A. It's not entirely eliminated, but the possibility 19 would have been just forgetting to -- forgetting to write 20 something on there.</p> <p>21 Q. Right. Is it fair to say that looking back at what 22 you may have done in April of 2009 (sic) is hard to do after 23 such a long period of time?</p>

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DEPOSITION EXHIBITINTROCASO
4

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
CIRCUIT COURT

9th CIRCUIT - FAMILY DIVISION - NASHUA
 2019 MAR - 1 A 11:12

CASE NO: 659-2018-DM-00702

IN THE MATTER OF DAVID B. CAMPBELL AND ROBIN A. PARTELLO

MOTION TO EXCEED FEE CAP

NOW COMES Kathleen A. Sternenberg, Guardian ad Litem, in the above-referenced case, and she respectfully requests that this Court issue allow the Guardian ad Litem to exceed the fee cap by an additional \$1,000 and in support thereof states as follows:

1. On October 25, 2018, Kathleen A. Sternenberg, was appointed to act as Guardian ad Litem for [REDACTED], DOB [REDACTED]/2014.
2. This matter has involved allegations of inappropriate contact with the child and a police investigation and DCYF investigation.
3. The GAL has filed multiple pleadings, prepared for and attended hearings, and has received and replied to ongoing daily email exchanges, phone calls, arranged and attended in person meetings, home visits at both homes, had multiple contacts with the child's school, pediatricians, therapist; and has received police, DCYF and medical records and met with police and had contacts with DCYF.
4. The GAL has used the initial retainer and supplemental retainer¹ as of her billing this week.
5. The GAL anticipates that within a month, she will need to write and file a comprehensive report and to testify at the upcoming contested hearing.
6. The GAL has informed both parties of her intent to file this motion.
7. David Campbell has assented to this motion.
8. Robin Partello objects to this motion.

WHEREFORE, the Guardian ad Litem respectfully requests that this Court:

- A. Allow the GAL's motion to exceed the fee cap in the amount of \$1,000 and order

¹The GAL has not received Robin Partello's portion of the supplemental retainer as of this writing.

the parties to provide CAL an additional percentage of the retainer within fourteen days of the order; and

B. Grant such other relief as may be fair and just.

Respectfully submitted,

Dated: February 28, 2019

Kathleen A. Sternenberg, Esq., NHB#8840
Law Office of Kathleen A. Sternenberg
P.O. Box 2288
Concord, NH 03302-2288
(603)641-1048 phone
(603)215-7570 fax
kas@sternenberglaw.com

Certificate of Service

I, Kathleen A. Sternenberg, hereby certify that I have, this day, mailed a copy of this motion to Jeffrey Manganaro, Esq./Tracey Goyette Cote, Esq., counsel for David B. Campbell and to Robin A. Partello, pro se.

Kathleen A. Sternenberg

Motion Granted / Denied
3-12-19
Date: _____
Judge: Julie A. Intoccio

over the Respondent's objection at # 36

THE STATE OF NEW HAMPSHIRE
 JUDICIAL BRANCH
 CIRCUIT COURT

9th CIRCUIT - FAMILY DIVISION - NASHUA

2019 MAR - 1 A II: 12.

CASE NO: 659-2018-DM-00702

IN THE MATTER OF DAVID B. CAMPBELL AND ROBIN A. PARTELLO

MOTION TO EXCEED FEE CAP

NOW COMES Kathleen A. Sternenberg, Guardian ad Litem, in the above-referenced case, and she respectfully requests that this Court issue allow the Guardian ad Litem to exceed the fee cap by an additional \$1,000 and in support thereof states as follows:

1. On October 25, 2018, Kathleen A. Sternenberg, was appointed to act as Guardian ad Litem for B [REDACTED], DOB [REDACTED] 2014.
2. This matter has involved allegations of inappropriate contact with the child and a police investigation and DCYF investigation.
3. The GAL has filed multiple pleadings, prepared for and attended hearings, and has received and replied to ongoing daily email exchanges, phone calls, arranged and attended in person meetings, home visits at both homes, had multiple contacts with the child's school, pediatricians, therapist; and has received police, DCYF and medical records and met with police and had contacts with DCYF.
4. The GAL has used the initial retainer and supplemental retainer¹ as of her billing this week.
5. The GAL anticipates that within a month, she will need to write and file a comprehensive report and to testify at the upcoming contested hearing.
6. The GAL has informed both parties of her intent to file this motion.
7. David Campbell has assented to this motion.
8. Robin Partello objects to this motion.

WHEREFORE, the Guardian ad Litem respectfully requests that this Court:

- A. Allow the GAL's motion to exceed the fee cap in the amount of \$1,000 and order

¹The GAL has not received Robin Partello's portion of the supplemental retainer as of this writing.

the parties to pay the GAL the additional percentage of the retainer within fourteen days of this order; and

B. Grant such other relief as may be fair and just.

Respectfully submitted,

Dated: February 28, 2019

Kathleen A. Sternenberg

Kathleen A. Sternenberg, Esq., NHB#8840
Law Office of Kathleen A. Sternenberg
P.O. Box 2288
Concord, NH 03302-2288
(603)641-1048 phone
(603)215-7570 fax
kas@sternenberglaw.com

Certificate of Service

I, Kathleen A. Sternenberg, hereby certify that I have, this day, mailed a copy of this motion to Jeffrey Manganaro, Esq./Tracey Goyette Cote, Esq., counsel for David B. Campbell and to Robin A. Partello, pro se.

Kathleen A. Sternenberg

Kathleen A. Sternenberg

ORIGINAL

DEPOSITION EXHIBIT

INTROCASO
14

EXHIBIT 3

DERBY
1/18/2021

DAVID CAMPBELL
AND
ROBIN PARTELLA

659-2018-DM-702

On 3-15-19, the Petitioner filed a motion to continue a Status Conf. scheduled by this judge. The motion (#38) is GRANTED.

In filing the motion, the Petitioner inquired as to the purpose of the hearing. The undersigned judge scheduled the hearing to disclose her conflict with the Court-appointed GAL in the case.

Although this judge has made no substantive rulings in this matter, it has approved substantive orders issued by the marital master that had previously handled this litigation.

The marital master has been reassigned to another court location, so numerous substantive motions were presented to this judge for review.

In doing so, this judge

pg 2. has determined that she is unable to address these motions, particularly as some relate directly to the payment and performance of the GAL.

The GAL has been a long-standing friend of this judge; she has vacationed with her, discussed personal matters in depth (including financial issues) and the GAL is the godparent to one of this judge's children.

The Court does not believe this conflict, under the circumstances as stated above, is one which can be waived.

The Court hoped to put this matter on the record and set this matter for trial before another judge; however, even that may be seen as inappropriate given the conflict over the GAL specifically.

The wisest course for this judge, and in an attempt to

pg 3.

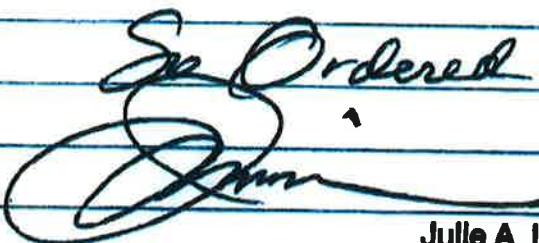
provide the parties with the most unbiased and fair hearing, is to simply withdraw as the presiding justice in this matter with regret as to the delay this may cause to the parties.

ORDER:

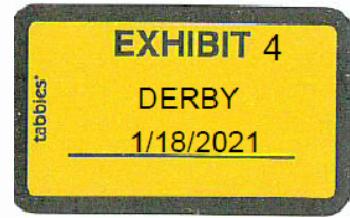
1. Judge Julie Introcaso shall have no further involvement in this matter.
2. The Clerk shall expeditiously work with the parties to reassign this matter, resolve the pending motions, and schedule this matter for any further hearing.
3. No status conference will occur on March 19, 2019.

So Ordered.

3/15/19



Julie A. Introcaso



2019 New Hampshire Revised Statutes
Title LXII - Criminal Code
Chapter 641 - Falsification in Official
Matters
Section 641:6 - Falsifying Physical
Evidence.

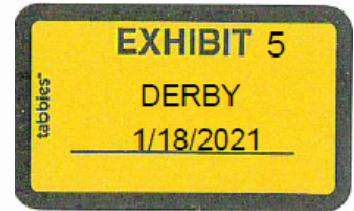
Universal Citation: NH Rev Stat § 641:6 (2019)

641:6 Falsifying Physical Evidence. —

A person commits a class B felony if, believing that an official proceeding, as defined in RSA 641:1, II, or investigation is pending or about to be instituted, he:

- I. Alters, destroys, conceals or removes any thing with a purpose to impair its verity or availability in such proceeding or investigation; or
- II. Makes, presents or uses any thing which he knows to be false with a purpose to deceive a public servant who is or may be engaged in such proceeding or investigation.

Source. 1971, 518:1, eff. Nov. 1, 1973.



2019 New Hampshire Revised Statutes
Title LXII - Criminal Code
Chapter 641 - Falsification in Official
Matters
Section 641:7 - Tampering With Public
Records or Information.

Universal Citation: NH Rev Stat § 641:7 (2019)

641:7 Tampering With Public Records or Information. –

A person is guilty of a misdemeanor if he:

- I. Knowingly makes a false entry in or false alteration of any thing belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or
- II. Presents or uses any thing knowing it to be false, and with a purpose that it be taken as a genuine part of information or records referred to in paragraph I; or
- III. Purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such thing.

Source. 1971, 518:1, eff. Nov. 1, 1973.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - Family Division - Nashua
30 Spring Street, Suite 102
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

ROBIN PARTELLO
97 EAST BROADWAY
APT 7
DERRY NH 03038

EXHIBIT 6

DERBY

1/18/2021

Case Name: In the Matter of David Campbell and Robin Partello
Case Number: 659-2018-DM-00702

Enclosed please find a copy of the Court's Order dated March 12, 2019 relative to:

Further Motion for Instruction Regarding GAL Supplemental
Retainer Payment by Robin Partello
"Legal fees/GAL fees to be paid in Cash, by Money Order or
Bank Check, ONLY".

So Ordered

Introcaso, J.

March 12, 2019

Sherry L. Bisson
Clerk of Court

(579)

C: Kathleen A. Sternenberg; Tracey G. Cote, ESQ

EXHIBIT 1

LODES
8/26/2020

Michelle Perrier Cole, LCR

EXHIBIT 9(Copy)

BISSON
7/22/2020

Michelle Perrier Cole, LCR

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
CIRCUIT COURT

9th CIRCUIT - FAMILY DIVISION - NASHUA

2019 MAR -1 A II: 12

CASE NO: 659-2018-DM-00702

IN THE MATTER OF DAVID B. CAMPBELL AND ROBIN A. PARTELLO

FURTHER MOTION FOR INSTRUCTION REGARDING
GAL SUPPLEMENTAL RETAINER PAYMENT BY ROBIN PARTELLO

NOW COMES Kathleen A. Sternenberg, Guardian ad Litem, in the above-referenced case, and she respectfully requests that this Court issue a further order to instruct Robin Partello to pay the GAL via check, money order or cash payment immediately and in support thereof states as follows:

1. On October 25, 2018, Kathleen A. Sternenberg, was appointed to act as Guardian ad Litem for [REDACTED] [REDACTED], DOB [REDACTED] 2014.
2. Although this court ordered that Robin Partello pay the Guardian ad Litem within seven days of its recent order, the Guardian ad Litem has not received the \$350 second retainer amount in a form acceptable to the GAL.
3. Robin Partello has apparently sent electronic funds to Apple Pay and insists that the GAL accept these funds.
4. The GAL does not accept Apple Pay and does not have Apple Pay connected to her client trust account.
5. The GAL has repeatedly informed Robin Partello that she does not accept electronic payments for retainers.
6. The GAL has informed Robin Partello that she needs to either send a check or money order or arrange a time to meet the GAL to give her cash.
7. Robin Partello has refused to do so.

WHEREFORE, the Guardian ad Litem respectfully requests that this Court:

- A. Order Robin Partello to pay the GAL retainer in the amount of \$350 by cash, by check or by money order and to either mail the check or money order to the GAL's business address or to arrange to meet the GAL at the NH Bar Association offices with a cash payment; and
- B. Grant such other relief as may be fair and just.

Respectfully submitted,

Dated: February 28, 2019

Kathleen A. Sternenberg

Kathleen A. Sternenberg, Esq., NHB#3840
Law Office of Kathleen A. Sternenberg
P.O. Box 2288
Concord, NH 03302-2288
(603)641-1048 phone
(603)215-7570 fax
kas@sternenberglaw.com

Certificate of Service

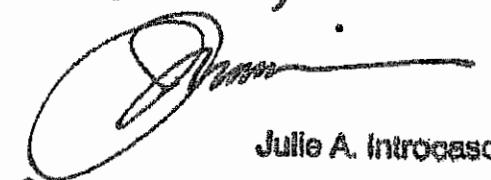
I, Kathleen A. Sternenberg, hereby certify that I have, this day, mailed a copy of this motion to Jeffrey Manganaro, Esq./Tracey Goyette Cote, Esq., counsel for David B. Campbell and to Robin A. Partello, pro se.

Kathleen A. Sternenberg
Kathleen A. Sternenberg

3/12/19 -

Legal fees / GAL fees
to be paid in cash
by money order or
bank check, ONLY.

so Ordered.


Julie A. Introcaso

Kathleen Sternenberg

From: Robin Partello <robinpartello@yahoo.com>
Sent: Tuesday, February 26, 2019 5:16 PM
To: Kathleen Sternenberg
Subject: Re: I do not accept Apple Pay

RECEIVED
NH CIRCUIT COURT
9TH CIRCUIT NASHUA
1 2019 MAR - 1 A 11:12

Yes, I fully understand. Everyone is set up for Apple Pay if you have an Apple phone.

You take the funds that I sent you and deposit it into your IOLTA.

Quite honestly, you are the first attorney that I've ever met that doesn't take electronic payments and does not have an office.

I did my part. I sent the money. You have it available. It's not my obligation to drive to Concord NH to drop off cash when you may not be there. The office staff at the N.H. Bar Association already refused to sign a statement as a witness. They said they don't work for you. You're putting me in a tough spot.

I'll just file with the Court for instruction.

Sent from my iPhone

> On Feb 26, 2019, at 4:52 PM, Kathleen Sternenberg <kas@sternenberglaw.com> wrote:

>

> Ms. Partello,

>

> Please arrange to bring me \$350 cash at the NH Bar Association. I can not accept Apple Pay. I do not have it set up. This money is deposited in to my Client Trust account. It is not my money, as you know. I would appreciate your understanding.

>

> Kathleen A. Sternenberg, Esq., #8840

> Law Office of Kathleen A. Sternenberg

> P. O. Box 2288

> Concord, NH 03302-2288

> (603)641-1048

> kas@sternenberglaw.com

>

>> On Feb 26, 2019, at 4:45 PM, Robin Partello <robinpartello@yahoo.com> wrote:

>>

>> Apple Pay is the most secure source of electronic payment. I sent the exact amount of money that you requested and it was available to you instantaneously.

>>

>> Kathleen, honestly, you asked for a \$350, I sent it and it was immediately available. Instead, you email me and tell me to go to a bank, get a money order, go to a Post Office and mail it with "tracking".

>>

>> As I told you before, you don't have a business office, I can't drop off cash like I did the last time when we met at the N.H. Bar Association conference room. Mailing a money order is like mailing cash, it's never a good idea.

>

ORIGINAL

>> I sent you the exact amount that you requested. You have the \$350. I will file a motion with the Court for instruction as it seems ludicrous that you won't accept such a secure form of payment. You are essentially tying my hands behind my back. I don't use checks. You don't have an office & you don't accept electronic payments.

>>

>> I'll file a Motion to Inform the Court.

>>

>> Sent from my iPhone

>>

>>> On Feb 26, 2019, at 2:24 PM, Kathleen Sternenberg <kas@sternenberglaw.com> wrote:

>>>

>>> Please go to the post office, purchase a money order and mail it to me. If you would like, you can send it with tracking. I do not, and will not, accept Apple Pay for retainer deposits.

>>>

>>> Kathleen A. Sternenberg, Esq., #8840 Law Office of Kathleen A.

>>> Sternenberg P. O. Box 2288 Concord, NH 03302-2288

>>> (603)641-1048

>>> kas@sternenberglaw.com

ORIGINAL

Kathleen Sternenberg

From: Robin Partello <robinpartello@yahoo.com>
Sent: Tuesday, February 26, 2019 9:12 AM
To: Kathleen Sternenberg
Subject: Re: Following up with you.

I sent it electronically. Honestly, you only accept checks, which I don't use and haven't for years. I can get a money order but I don't want to mail it as it's the same as cash. You don't have an office so I couldn't even drop off the money order or cash.

Additionally, I'd prefer to have a record of my payment. Further, have you sent a recent invoice? I have not received it.

Sent from my iPhone

On Feb 26, 2019, at 8:08 AM, Kathleen Sternenberg <kas@sternenberglaw.com> wrote:

Robin,

You told me that you would send me the \$350 retainer. I have not received your payment. Is this something you have sent?

Kathleen A. Sternenberg, Esq., NH Bar #8840
Law Office of Kathleen A. Sternenberg
P.O. Box 2288
Concord, NH 03302
(603)641-1048 phone
kas@sternenberglaw.com

From: Robin Partello [<mailto:robinpartello@yahoo.com>]
Sent: Tuesday, February 26, 2019 7:24 AM
To: Kathleen Sternenberg
Subject: Re: Following up with you.

Kathleen:

I am in the process of obtaining an attorney. Although I would love to answer your questions, I await for my counsel to advise.

Due to the voluminous case file, it will take three to five business days for the attorney(s) to review.

I DO NOT assent to your motion to exceed the cap.

Sent from my iPhone

On Feb 25, 2019, at 1:04 PM, Kathleen Sternenberg <kas@sternenberglaw.com> wrote:

2/25/2019

Hi, Robin,

I have not received your retainer check.

ORIGINAL

I have a couple of things that I would like to hear directly from you about. I would ask that you respond to these questions in writing, please.

1. When we originally sat down, I believe you told me that you had never been married. I would like to have you confirm this as when I asked your parents, they said you had been married to a man named Jeff. Please provide Jeff's full name and the dates of your marriage and how the marriage ended and date of separation and divorce. I would like to understand from you what the circumstances of the divorce were.
2. Also, when we met, I believe you told me that you moved from your parents' home to your Derry condo. You told me that you did not live anywhere in between. It is my understanding that there were several months between when you left your parents' home and when you were able to move in to your Derry condo after the tenant's vacated. Could you please tell me where you lived between June and September? It is important to me to know and understand where [REDACTED] has lived.
3. Would you also clarify for me if you have had any boyfriends, companions or significant others during [REDACTED] lifetime? I had asked you about the nature of the relationship with Russ, your neighbor, and I believe that you said that Russ was just someone who allowed you and [REDACTED] to use his bathroom while he was at work. However, I have information that [REDACTED] may have been around Russ and Russ may have disciplined him and that Russ may have provided you transportation. I would like to better understand the nature of this relationship and any other relationship where the man has been in contact with your son for any length of time and has gotten to know him. I understand from David that there was someone who used to go to the sports activities with you to watch [REDACTED]?
4. Could you also provide me with your work schedule for the past several months? I would like to confirm exactly what your hours are and what days and times during each 7 day period.
5. I would like to better understand where [REDACTED] stays during your work hours. I know that your parents have mentioned that he is sometimes with them. I know that [REDACTED] spends some time with David. Before this current court order, where was [REDACTED] when you were working? Please tell me any and all places where he would have been watched. I would like to better understand where [REDACTED] has stayed throughout this case.

Thank you for your answers to these specific questions.

Finally, it is clear to me that it will be necessary for me to exceed the fee cap in order to prepare my report and to testify at the final hearing. I will be filing a motion to exceed and would very much appreciate your assent. Please let me know if you assent to this filing. Thank you.

Kathleen A. Sternenberg, Esq., NH Bar #8840
Law Office of Kathleen A. Sternenberg
P.O. Box 2288
Concord, NH 03302

ORIGINAL

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - Family Division - Nashua
30 Spring Street, Suite 102
Nashua NH 03060

B
Stricken
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TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

1/10/20

NOTICE OF DECISION

FILE COPY

EXHIBIT 7

tabbed

DERBY

1/18/2021

Case Name: **In the Matter of David Campbell and Robin Partello**
Case Number: **659-2018-DM-00702**

Enclosed please find a copy of the Court's Order dated March 12, 2019 relative to:

**Further Motion for Instruction Regarding GAL Supplemental
Retainer Payment by Robin Partello
"Legal fees/GAL fees to be paid in Cash, by Money Order or
Bank Check, ONLY".**

So Ordered

Introcaso, J.

March 12, 2019

Sherry L. Bisson
Clerk of Court

(579)

C: Robin Partello; Kathleen A. Sternenberg; Tracey G. Cote, ESQ

ORIGINAL

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
CIRCUIT COURT

9th CIRCUIT - FAMILY DIVISION - NASHUA

2019 MAR - 1 A 11:12

CASE NO: 659-2018-DM-00702

IN THE MATTER OF DAVID B. CAMPBELL AND ROBIN A. PARTELLO

FURTHER MOTION FOR INSTRUCTION REGARDING
GAL SUPPLEMENTAL RETAINER PAYMENT BY ROBIN PARTELLO

NOW COMES Kathleen A. Sternenberg, Guardian ad Litem, in the above-referenced case, and she respectfully requests that this Court issue a further order to instruct Robin Partello to pay the GAL via check, money order or cash payment immediately and in support thereof states as follows:

1. On October 25, 2018, Kathleen A. Sternenberg, was appointed to act as Guardian ad Litem for B [REDACTED], DOB [REDACTED] 2014.
2. Although this court ordered that Robin Partello pay the Guardian ad Litem within seven days of its recent order, the Guardian ad Litem has not received the \$350 second retainer amount in a form acceptable to the GAL.
3. Robin Partello has apparently sent electronic funds to Apple Pay and insists that the GAL accept these funds.
4. The GAL does not accept Apple Pay and does not have Apple Pay connected to her client trust account.
5. The GAL has repeatedly informed Robin Partello that she does not accept electronic payments for retainers.
6. The GAL has informed Robin Partello that she needs to either send a check or money order or arrange a time to meet the GAL to give her cash.
7. Robin Partello has refused to do so.

WHEREFORE, the Guardian ad Litem respectfully requests that this Court:

- A. Order Robin Partello to pay the GAL retainer in the amount of \$350 by cash, by check or by money order and to either mail the check or money order to the GAL's business address or to arrange to meet the GAL at the NH Bar Association offices with a cash payment; and
- B. Grant such other relief as may be fair and just.

ORIGINAL

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Respectfully submitted,

Dated: February 28, 2019

Kathleen A. Sternenberg

Kathleen A. Sternenberg, Esq., NHB#~~8840~~
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Certificate of Service

I, Kathleen A. Sternenberg, hereby certify that I have, this day, mailed a copy of this motion to Jeffrey Manganaro, Esq./Tracey Goyette Cote, Esq., counsel for David B. Campbell and to Robin A. Partello, pro se.

Kathleen A. Sternenberg

Kathleen A. Sternenberg

ORIGINAL

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

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NOTICE OF DECISION

FILE COPY

EXHIBIT 8

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DERBY

1/18/2021

Case Name: **In the Matter of David Campbell and Robin Partello**
Case Number: **659-2018-DM-00702**

Enclosed please find a copy of the Court's Order dated April 26, 2019 relative to:

Order on Motion to remove GAL

Derby, M.

April 29, 2019

Sherry L. Bisson
Clerk of Court

(659304)

C: Jeffrey Leo Manganaro, ESQ; Robin Partello; Kathleen A. Sternenberg

The State of New Hampshire

Hillsborough County

Ninth Circuit Court ~ Family Division ~ Nashua ~ Merrimack

In the matter of: David Campbell and Robin Partello

Docket No. 65 9 - 2018 - DM - 702

ORDER on #41, Motion to Remove GAL

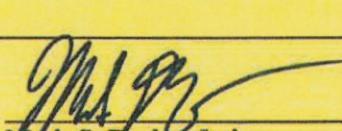
Prior to ruling on the motion to remove GAL, the undersigned officer reviewed the October 24, 2018 Order Appointing GAL, the February 15, 2019 Order approving the Master's recommendation on the GAL's motion for instruction, the February 15, 2019 Order approving the Master's recommendation on the Motion to Strike, and the two March 12, 2019 orders re the GAL's fee cap and GAL payment method, as well as the relevant motions and objections.

Reviewing all of those matters de novo, the undersigned officer would have issued the same orders, though the respondent may pay the GAL by personal check (in addition to the other methods), though the respondent does not use personal checks.

Substantively, the motion to dismiss/remove GAL is denied. The respondent's allegations do not form a sufficient basis to terminate the GAL and start over, which would cost significant funds and waste judicial resources. The GAL's sole mission is to investigate and advocate for [REDACTED] and this may cause friction with the parents. That is a normal part of the process.

Motion denied.

Date: 4-26, 2019


Mark S. Derby, Judge
Ninth Circuit Court